

Panaji, 18th September, 2003 (Bhadra 27, 1925)

SERIES II No. 25

OFFICIAL GAZETTE GOVERNMENT OF GOA



SUPPLEMENT No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/98/153

The following Award dated 9-10-1998 in Reference No. IT/42/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/42/97

Shri Dharma N. Naik,
Warchawada, Harmal,
Pernem-Goa.

... Workman/Party I

V/s

Shri Ganpat Shanker Parsekar,
Warchawada, Harmal,
Pernem-Goa.

... Employer/Party II

Party I-Workman represented by Adv. V. B. Thaly.

Party II-Employer represented by Adv. G. K. Sardessai.

Panaji, dated: 9-10-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. IRM/CON-MAP/(25)/96/4273 dated 12th August, 1997 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Ganpat Shankar Parsekar, Rice and Flour Mill Owner, Harmal, Pernem-Goa, in terminating the services of Shri Dharma N. Naik, Mill Operator with effect from 21-3-1994, is legal and justified ?

If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/42/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "Workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer-Party II (for short, "Employer") as a labourer/operator in his rice and flour mill situated at Harmal, Pernem-Goa, since the year 1961. That on 21-3-94 the employer without giving any prior information or notice suddenly refused employment to the employer. That on refusal of employment the workman through Shri R. D. Mangueskar, Secretary of Goa Trade & Commercial Workers Union sent registered A/D notice dated 18-9-95 and 19-10-95 to the employer, but the employer did not take any measure to settle the dispute. That at the time of termination of his services the employer did not pay any compensation as is required to be paid under the provisions of the Act. The workman contended that the employer taking undue advantage of the illiteracy of the workman registered the Rice and Flour Mill in the name of the workman in order to deprive him of the benefits of employment and that he came to know about this fact only when he received a letter from the Judicial Magistrate First Class,

Panaji, charging the workman of violating the provisions of Shops & Establishments Act, 1970. The workman contended that the employer has been registered as the owner of the Rice & Flour Mill with the Department of Civil Supplies. The workman therefore pray that the employer be directed to pay to him compensation of Rs. 1,00,000/- (Rupees one lakh only) and he may be also given the benefits as provided under the Act.

3. The employer filed the written statement which is at Exb. 5. By way of preliminary objection the employer stated that the reference is null and void as the Rice and Flour Mill of the employer is not an "Industry" within the meaning of Section 2(J) of the Industrial Disputes Act, 1947 and the workman is not a "Workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947. The employer also contended that there is no employer-employee relationship between the workman and the employer and therefore there does not survive any industrial dispute between the workman and the employer. On the merits of the case the employer stated that the workman is his distant relative and he is to carryout cycle repairing work within the vicinity of the Flour Mill belonging to the employer. The employer stated that he used to operate the Flour Mill only for two hours on a working day and the timing was from 4.30 p.m. to 6.30 p.m. and due to this most of the time during the entire day the Flour Mill used to remain closed and the workman who used to remain present near the Flour Mill was carrying out the cycle repairs within the premises of the Flour Mill. The employer stated that taking the advantage of the business of the employer the workman gave false information to the Labour authorities at the time when they came for inspection and registered himself as the owner of the Flour Mill and also appeared before the court of law and paid the fine in his own name for violating the provisions of Shops & Establishments Act without the knowledge of the employer. The employer stated that there is no employer-employee relationship between workman and the employer and since there is no demand from the workman on the employer there is no industrial dispute and hence the reference is not maintainable. The employer stated that the contention of the workman that he was refused employment without giving any prior notice or information is false because the workman was never in employment of the employer and he was carrying on his own business of repairing cycles within the premises of the Flour Mill. The employer denied that the workman was in employment for more than 34 years or that he is entitled to any compensation as claimed by him. The employer denied that taking the undue advantage of the sober nature of the workman he registered the Flour Mill in the name of the workman in order to deprive him of the benefits of employment. The employer stated that he is still the owner of the flour mill and the registration certificate still stands in his name. The employer denied that the workman is entitled to any relief as claimed by him.

4. On the pleadings of the parties, the following issues were framed at Exb. 6.

1. Whether the Party I proves that he was employed with the Party II as a Labourer/Operator in his Rice and Flour Mill situated at Harmal, Pernem Goa, since the year, 1961?
2. Whether the Party I proves that the Party II terminated his services w.e.f 21-3-94 which is illegal and unjustified?
3. Whether the Party II proves that his Flour Mill is not an "industry" within the meaning of Sec. 2(J) of the I.D. Act, 1947?
4. Whether the Party II proves that the Party I is not a "Workman" within the meaning of Sec. 2 (S) of the I.D. Act, 1947?
5. Whether the Party II proves that no industrial dispute survives and hence the reference is not maintainable ?
6. Whether the Party I is entitled to any relief ?
7. What Award?

5. My findings on the issues are as follows:—

Issue No. 1:	In the negative
Issue No. 2:	In the negative
Issue No. 3:	In the negative
Issue No. 4:	In the negative
Issue No. 5:	In the negative
Issue No. 6:	In the negative
Issue No. 7:	As per order below.

REASONS

6. Issue Nos. 3, 4 & 5: These issues are taken up first as they relate to the maintainability of the reference. The employer had contended in the written statement that the workman is not a "Workman" within the meaning of Section 2(S) of the Industrial Disputes Act, 1947; his Flour Mill is not an "Industry" within the meaning of Section 2(J) of the Industrial Disputes Act, 1947 and that there is no employer-employee relationship between the workman and the employer and since there is no demand made on the employer no industrial dispute survives and the reference is not maintainable. Since by raising the above pleas the employer wanted to oust the jurisdiction of this Tribunal to decide the reference, the burden was cast on the employer to prove the above contentions. However, inspite of the opportunity given no evidence was led by the employer and therefore the contentions raised by the employer stand not proved. In the absence of any evidence from the employer the issue Nos. 3, 4 and 5 cannot be answered in favour of the employer. In the circumstances, I answer issue Nos. 3, 4 and 5 in the negative.

7. Issue Nos. 1 & 2 : Since it was the case of the workman that he was employed with the employer in his flour mill since the year 1961 and that his services were terminated w.e.f 21-3-94 by the employer illegally, the burden was on him to prove these contentions. The workman was given

several opportunities to lead evidence but none appeared on behalf of the workman and ultimately the evidence of the workman had to be closed on 25-9-98. The reference of the dispute was made by the Government at the request of the workman as he challenged the action of the employer in terminating his services. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provisions of Rule 10(B) of the Industrial Disputes (Central Rules, 1957) clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V.K. Raj Industries v/s Labour Court and others reported in 1981 (29) FLR 194, the Allahabad High Court has held the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is a well settled law that if the party challenges the validity of an order the burden lies upon him to prove the legality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement to produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs.

8. In the present case the dispute was raised by the workman that his services were illegally terminated by the employer and the reference was made by the Government at his instance. Therefore applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer in terminating his services 21-3-94 is illegal and unjustified. The workman was given several opportunities to lead evidence, but he did not appear and consequently there is no evidence on record on behalf of the workman. Therefore there is no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the circumstances I hold that the workman has failed to prove that he was employed with the employer since the year, 1961 and that the action of the employer in terminating his services w.e.f. 21-3-94 is illegal and unjustified. I, therefore answer the issue Nos. 1 and 2 in the negative.

9. Issue No. 6 : Since it has been held by me that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 21-3-94 is illegal and unjustified, the question of granting any relief to the workman does not arise. I, therefore hold that the workman is not entitled to any relief and answer the issue in the negative.

In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Ganpat Shanker Parsekar, Rice and Flour Mill Owner, Harmal, Pernem-Goa, in terminating the services of workman Shri Dharma N. Naik, Mill Operator w.e.f. 21-3-1994 is legal and justified. It is hereby further held that the workman is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/243

The following Award dated 24-12-1998 in Reference No. IT/111/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th January, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/111/94

Shri Francis Fernandes,
H. No. 99, Amlai Panchwadi,
Shiroda, Ponda-Goa. Workman/Party I

V/S
M/s. Korde Electric Control,
Mahalaxmi Shopping Complex,
Ponda-Goa. Employer/Party II

Party I - Workman represented by Adv. Shri P. B. Devari.

Party II - Employer represented by Adv. Shri B. G. Kamat.

Panaji, Dated: 24-12-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15-12-94 bearing No. 28/53/94-LAB referred the following dispute for adjudication by this Tribunal.

- (1) Whether the action of the management of M/s. Korde Electric Control, Ponda, in terminating the services of their workman Shri Francis Fernandes, Technician, with effect from 17-8-1993, is legal and justified ?
- (2) If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/111/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "Workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was working with the employer-Party II (for short, "Employer") w.e.f. 2nd October, 1989 as a Radio and TV Technician. That he worked continuously up to 16-8-93 and on 17-8-93 the employer terminated his services without giving any notice. That at the time of termination of his service the employer did not conduct any enquiry nor paid his legal dues. That before terminating his services the employer did not follow Section 25FFF of the I. D. Act, 1947. The workman contended that since the date of termination of his service he is unemployed and suffers great hardship. The workman contended that termination of his service by the employer is illegal and unjustified and therefore he is entitled to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that there was no dispute between the employer and the workman at any point of time in respect of termination of service of the workman and the only dispute was regarding alleged non payment of his wages for the period from 1-8-93 to 17-8-93 and other legal dues such as bonus. The employer stated that on receipt of the notice dated 17-5-94 from the conciliation officer, Ponda, the employer by letter dated 19-5-94 asked for a copy of the complaint made by the workman to the Conciliation Officer on the basis of which industrial dispute was apprehended and proposed conciliation proceedings were being held. The employer stated that from the complaint dated 13-5-94 made by the workman it can be seen that the workman at all times was seeking assistance/intervention of the conciliation machinery under the Industrial Disputes Act, 1947 in the matter of recovery of his legal dues only and the present reference made in the matter of termination of services of the workman was never the subject matter of dispute either between the workman and the employer or before the conciliation officer. The employer therefore stated that the present reference is incompetent and void and is

liable to be rejected as the same is not maintainable. The employer denied that the services of the workman were terminated from 17-8-93 and stated that the workman voluntarily retired from service w.e.f. 17-8-93. The employer denied that any legal dues were payable to the workman or that any enquiry was required to be conducted or the provisions of Section 25FFF of the I. D. Act, 1947 were required to be followed. The employer denied that the workman is unemployed or that he is undergoing hardships. The employer denied that the workman is entitled to any reliefs as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties, following issues were framed at Exb. 8.

1. Whether Party I proves that Party II terminated his services without complying with the provisions of Section 25FFF of the I. D. Act, 1947 ?
2. Whether Party I proves that the termination of his services by Party II w.e.f. 17-8-94 is illegal and unjustified ?
3. Whether Party II proves that Party I never raised the dispute before Party II or the Conciliation Officer as regards the termination of his services and hence the reference is not maintainable ?
4. Whether Party II proves that Party I voluntarily retired from service w.e.f. 17-8-93 ?
5. Whether Party I is entitled to any relief ?
6. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: Does not arise.

Issue No. 2: Does not arise.

Issue No. 3: In the affirmative.

Issue No. 4: Does not arise.

Issue No. 5: In the negative.

Issue No. 6: As per order below.

REASONS

6. Issue No. 3 : This issue is taken up first because it goes to the root of the matter as to whether the reference is maintainable. Adv. Shri B. G. Kamat, the learned Advocate for the employer submitted that the employer had raised the contention in the written statement that the reference is not maintainable because the workman never raised the dispute before the employer or before the Conciliation Officer as regards termination of his service. He submitted that the employer has produced the complaint dated 13-5-94 Exb. E-1 made by the workman to the Asst. Labour Commissioner, Ponda, and the workman has admitted his signature on the said complaint. He submitted that the said complaint has been filed by the workman about nine months after his

service is alleged to have been terminated, and in the said complaint there is no mention by him that his service has been illegally terminated nor he has demanded that he should be reinstated in service. Adv. Shri Kamat submitted that the complaint filed by the workman refers to only non payment of his legal dues. He submitted that reference could not have been made by the Government unless there was specific demand for reinstatement before the employer or before the Conciliation Officer. In support of his contention he relied upon the decision of the Himachal Pradesh High Court in the case of M/s. Village Papers Pvt. Ltd. v/s State of Himachal Pradesh and Others, reported in 1993 Lab. IC 99. Adv. Shri Devari, the learned Advocate for the workman submitted on the other hand that the complaint Exb. E-1 shows that the workman had raised the dispute as regards illegal termination of his service. He submitted that the workman in his deposition has stated that he made the complaint to the Asst. Labour Commissioner as regards illegal termination of his service. He submitted that in the conciliation proceedings held by the Asst. Labour Commissioner, the employer did not participate nor filed any reply to the complaint of the workman. He submitted that there is no substance in the contention of the employer that the reference is not maintainable.

7. The dispute which has been referred by the Government in the present case is as regards illegal termination of the services of the workman. The contention of the workman is that the action of the employer in terminating his services w.e.f. 17-8-93 is illegal and unjustified. The employer has raised the contention that reference is not maintainable because the workman never raised the dispute as regards termination of his service by the employer. It is the contention of the employer that before the reference was made there ought to have been a demand from the workman on the employee or on the Conciliation Officer that he should be reinstated in service because termination of his service is illegal and unjustified. In the case of Sindhu Settlement Corporation Ltd., v/s Industrial Tribunal of Gujrat and others, reported in AIR 1968 SC 529, the Supreme Court has held that an industrial dispute as defined must be a dispute between employer and employees, employers and workmen and workmen and a mere demand with the Government without a dispute being raised by the workman with his employer cannot become an industrial dispute. In para 4 of the judgment, the Supreme Court held as follows:

".... It may be that the Conciliation Officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent No. 3 and payment of wages to him from 21st January, 1958, but when the dispute came up before the Tribunal, the evidence produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no dispute at all was raised by the

respondents with the management, any request sent by them to the Government would only be demand by them and not an industrial dispute between them and their employer "

The above decision of the Supreme Court therefore lays down the law that the dispute which is referred by the Government must be the one which was raised by the workman with the employer. If it is not, the dispute referred cannot be an industrial dispute, and the reference made by the Government in that respect is not competent, as has been held by the Supreme Court in the above referred case. Adv. Shri B. G. Kamat, the learned Advocate for the employer has relied upon the decision of the Himachal Pradesh High Court in the case of M/s. Village Papers Pvt. Ltd. (supra) which is a full bench decision. The said High Court after considering the decisions of the various High Courts and that of the Supreme Court including the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. (supra) has held that a mere demand to the Government cannot become an industrial dispute without it being raised by the workman with their employer and if such a demand is made to the Government it can be forwarded to the management and if rejected becomes an industrial dispute. The High Court has also held that a demand can be made through the Conciliation Officer who can forward it to the management and seek its reaction and if the reaction is negative and not forthcoming and the parties remain at logger-heads, a dispute exists and a reference can be made. Therefore what is established from the above referred decisions is that unless there is a demand from the workman on the employer prior to the making of the reference, the Government cannot make reference of the dispute to the Tribunal for adjudication. This demand can be raised directly with the employer or through the Conciliation Officer.

8. In the present case the workman has examined only himself, and the employer has examined its Managing Partner Shri Manohar Konde. The workman in his deposition has stated that his services were terminated by the employer w.e.f. 17-8-93. He has stated that he made a complaint to the Asst. Labour Commissioner, Ponda, about termination of his service. He did not produce the copy of the complaint. However, in the course of his cross examination the said complaint has been brought on record by the employer. The said complaint is dated 13-5-94 (Exb. E-1). The workman has identified his signature on the said complaint and has stated that it is same complaint which he made to the Asst. Labour Commissioner. He has also stated that besides the demands made in the said complaint he did not make any other demands on the employer. He has further stated that no representative of the employer appeared before the Asst. Labour Commissioner. I have gone through the complaint dated 13-5-94 Exb. E-1. The subject matter of the complaint itself states that the complaint is regarding payment of salary which is due

to him. Though there is a reference in the complaint that the employer had asked the workman to leave the job the workman never demanded in the complaint that the employer should be directed to reinstate him in service. His complaint is that he was not paid his legal dues including 17 days salary, and when he tried to contact the owner he was not found in the office as can be seen from the last para of his complaint. The workman in his evidence never stated that after he left the job, he approached the employer at any time requesting him to take him back in service or that he at any time made such a demand on the employer. Therefore it is evident from the complaint Exb. E-1 that the workman never raised the dispute as regards illegal termination of his service nor made any demand for his reinstatement in service. The demand of the workman was for the payment of his legal dues including of 17 days salary.

Another relevant factor which is required to be considered is that according to the workman his services were terminated on 17-8-93. But he made the complaint to the Asst. Labour Commissioner, Ponda, only on 13-5-94, that is, nearly after 8 months. If the workman was really interested in reinstatement he would have made the complaint immediately or within reasonable time and not waited for eight months to make the complaint. Also the workman did not state in his evidence that after his services were terminated he approached the employer demanding reinstatement in service. This clearly shows that the workman was never interested in reinstatement in service but was interested in recovering his dues only. Therefore there is no evidence on record to show that the workman had raised the dispute as regards termination of his service either directly with the employer or through the Conciliation Officer nor there is evidence that the workman had made the demand on the employer directly or through the Conciliation Officer that he should be reinstated in service. Merely because the employer did not participate in the conciliation proceedings or did not reply to the complaint filed by the workman does not mean that the reference of the dispute as regards termination of service is competent. Shri Manohar Korde, the witness for the employer, who is the partner has stated in his deposition that in the letter dated 13-5-94 Exb. E-1 the workman had stated that his dues, that is, his salary for 17 days was not paid, and that the employer is ready to pay the said dues. In this case the failure report of the Conciliation Officer has not been produced. Even assuming that the failure report referred to the illegal termination of service of the workman and that the employer had refused to reinstate him, still the dispute would not be competent in view of the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. (supra) and the decision of the Himachal Pradesh High Court in the case of M/s. Village Papers Pvt. Ltd. (supra). In the circumstances I hold that the reference of the dispute made by the Government as regards termination of service of the workman is not competent as there was no industrial dispute at the time when the Government made the reference. In my

view the present reference is not maintainable and hence is liable to be rejected. I, therefore answer the issue No. 3 in the affirmative.

9. Since while deciding the issue No. 3 it has been held by me that the reference is not maintainable and is liable to be rejected, the question of deciding the other issues or granting any relief to the workman does not arise. In the circumstances, I pass the following order.

ORDER

It is hereby held that there was no industrial dispute at the time when the Government made the reference and hence the reference is not maintainable. The reference is therefore rejected.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/159

The following Award dated 10-11-1998 in Reference No. IT/60/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/60/94

Shri Tukaram Laxman Mahale,

Ugvem, Pernem-Goa. ... Workman/Party I

V/s

M/s Sanjivani Sahakari,

Sakhar Kharkana Ltd.,

Tisk, Ponda-Goa. ... Employer/Party II

Workman-Party I represented by Adv. D. P. Bhise.
Employer-Party II represented by Adv. Shri A. Diniz.

Dated: 10-11-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 3-5-94 bearing No. 28/16/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Sanjivani Sahakari Sakhar Karkhana Ltd., in superannuating Shri Tukaram Lexman Mahale with effect from 30-11-1992 is legal and justified.

If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/60/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, "workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he joined the services of the employer-Party II (for short, "Employer") as a Store Helper in or about the year 1972. That the conditions of service of the workman are regulated by standing orders of the employer and one of such conditions of service lays down that the workman shall retire on superannuation after attaining the age of 60 years. That surprisingly the employer issued a notice of retirement to the workman and inspite of the oral representation made by him the employer illegally retired the workman from service w.e.f. 1-11-92. That as per the records of service maintained by the employer the date of birth of the workman is 20th April, 1937 and the same is evident from the birth certificate issued by the Goverment authority and as such the workman was due for retirement in or about the year, 1997 and hence had a legal right to continue in the employment of the employer till the year, 1997. That the date of birth in the service records of the workman was on the basis of the certificate of birth issued under Section 17 of the Registration of Births and Deaths Act, 1969 produced by the workman and there was no other material or conflicting material before the employer to doubt veracity or correctness of the date of birth recorded in the records. The workman therefore contended that the action of the employer to retire him earlier is illegal, arbitrary and bad in law. The workman stated that the order dated 30-10-92 issued by the employer is arbitrary and without affording any opportunity to him as required under the principles of natural justice. The workman contended that as per his date of birth which is 20th April, 1937 he had still 4 more years to retire on superannuation. The workman stated that in or about the year, 1986 he was asked to produce birth records

and since his birth records were not available, as per the statutory provisions of Registration of Births and Deaths Act, 1969 he registered his birth in the year, 1986 and certificate to that effect was issued by the Chief Registrar and the same was submitted to the office of the employer for the purpose of records of service and the employer never raised any objection to the said certificate and accepted the same. The workman stated that suddenly he received a notice dated 19-10-92 asking him to report to Medical Doctor of the employer which he did and thereafter he was surprised to receive a notice of retirement issued by the employer by letter dated 31-10-92. The workman contended that the opinion of the Medical Officer of the employer is merely a surmise and the same cannot be relied upon. The workman contended that the employer did not appoint appropriate Medical Board to determine or fix his age. The workman therefore contended that the action of the employer in superannuating him w.e.f. 1-11-92 is illegal and unjustified.

3. The employer filed a written statement which is at Exb. 6. The employer stated that the workman had filed a civil suit bearing No. 57/92 in the court of Civil Judge, Jr. Division, Sanguem, seeking a declaration that the action of the employer in issuing notice dated 31-10-92 to retire the workman w.e.f. 1-12-92 is illegal and void and he be declared to be in service till retirement in accordance with the date of birth of 20-4-1937. The employer stated that subsequently by application dated 30-11-92 the workman unconditionally withdrew the said suit and accordingly the suit was dismissed as withdrawn by the court by order dated 30-11-92. The employer therefore stated that the workman cannot reagitate the same subject matter before this Tribunal. The employer denied that the date of birth of the workman is 20-4-1937 and stated that the certificate of birth is false and procured. The employer stated that the workman procured the false certificate by filing false certificate/declaration in the village Panchayat and since the concocted certificate is made about 50 years after the workman was born, the same has to be necessarily discarded. The employer stated that the workman in the form dated 29-8-78 which was submitted for the purpose of Provident Fund declared his complete age as 45 years and in addition to that he had submitted himself for medical examination to ascertain his age and accordingly he was examined by the Medical Officer of the employer who certified that the workman was more than 65 years of age. The employer denied that the workman is due for retirement in the year, 1997. The employer stated that the workman was correctly retired having crossed the age of 60 years and the workman accepted his retirement and received all his dues unconditionally. The employer stated that the workman did not produce birth certificate when he joined the services but it was somewhere in the year, 1990 when the Labour Welfare Officer of the employer called upon the employees to submit the birth certificates and a notice also was issued to that effect, the workman produced the said false and fabricated certificate of birth. The employer denied that there was any breach of

principles of natural justice or that the retirement of the workman is arbitrary, illegal or bad in law. The employer stated that since the workman has been correctly retired the workman is not entitled to any relief and the reference is liable to be rejected. The workman thereafter filed rejoinder which is at Exb. 7.

4. On the pleadings of the parties, following issues were framed.

1. Whether Party I proves that his date of birth is 20th April, 1937 and therefore, he could not have been superannuated w.e.f. 30-11-92 ?
2. Whether Party I proves that the action of Party II in superannuating the Party I w.e.f. 30-11-92 is illegal and unjustified ?
3. Whether Party II proves that Party I withdrew the Civil Suit filed by him in the Court of Civil Judge, Junior Division, Sanguem, in respect of the same dispute and hence he cannot reagitate the same dispute before this Tribunal.
4. Whether Party I is entitled to any relief ?

5. What Award ?

5. My findings on the issues are as follows.

Issue No. 1: Does not arise.

Issue No. 2: Does not arise.

Issue No. 3: In the affirmative.

Issue No. 4: Does not arise.

Issue No. 5: As per order below.

REASONS

6. Issue No. 3 : This issue is taken up first as it touches the maintainability of the reference. Adv. Shri Diniz, the learned counsel for the employer has contended that the workman cannot agitate the issue of his retirement w.e.f. 30-11-92 before this Tribunal again because he had filed a Civil Suit in the Court of Civil Judge at Sanguem challenging the notice of retirement dated 31-10-92 and he withdrew the said Civil Suit by application dated 30-11-92 unconditionally and also accepted all his legal dues. His contention is that on this ground the reference is liable to be rejected. In support of his above contention he has relied upon the decision of the Orissa High Court in the case of Biswanath Das & Others v/s Ramesh Chandra Patnaik and another reported in 1979 Lab. I. C. 319 and that of the Punjab and Haryana High Court in the case of the Kapurthala Central Co-operative Bank Ltd. v/s State of Punjab reported in 1990 (5) SLR 683. Adv. Shri Bhise, the learned counsel for the workman has on the other hand contended that the workman had filed the suit in the Civil Court for injunction restraining the employer from retiring the workman and as the said suit was withdrawn. The suit was not decided on merits. He has submitted that in the circumstances the principles of resjudicata are not applicable. In support of his this contention he has relied upon the decision of the

Supreme Court in the case of Kishan Lal v/s State of Jammu & Kashmir reported in 1994 I CLR 990 and that of the Orissa High Court in the case of Laxman Swain v/s Presiding Officer, Industrial Tribunal reported in 1993 (66) FLR 147.

7. The employer has challenged the maintainability of the reference on the ground that the workman had filed a Civil Suit against the order of the employer superannuating the workman w.e.f. 30-11-92. According to the employer the workman in the civil suit filed by him had challenged the action of the employer whereby he was superannuated. The workman in his deposition i. e. in his cross-examination admitted that he had filed the Civil Suit at Sanguem for the relief that he should be taken back in service. In his cross examination he admitted the copy of the plaint in Civil Suit No. 57/92 filed by him in the Court of the Civil Judge, Junior Division, Sanguem. The copy of the plaint is produced at Exb. E-1. He has admitted that in the said civil suit he was represented by Adv. Shri Bhise. The employer has produced the certified xerox copy of the application filed by the workman in the said civil suit praying for withdrawal of the said suit, at Exb. E-2. The workman has identified his signature on the said application. The employer examined Adv. Bhise as its witness. Adv. Shri Bhise in his deposition has stated that he was appearing for the workman in the Civil Suit No. 57/92 and that the workman filed the application dated 30-11-92 Exb. E-2 stating that he was not interested in the proceedings with the suit and hence he was withdrawing the suit unconditionally. He has stated that he also signed the said application and he identified his signature on the said application. From the above evidence therefore, it is established that the workman had challenged the action of the employer whereby he was superannuated from 30-11-92 by filing the Civil Suit in the court of the Civil Judge Junior Division at Sanguem. It is also established that the workman subsequently withdrew the said Civil Suit unconditionally on the ground that he was not interested in proceeding with the Suit. It is the contention of the employer that once the workman had withdrawn the Suit unconditionally it is deemed that he has abandoned his claim and hence he cannot be permitted to reagitate the same subject matter before the Tribunal in a reference. Adv. Shri Bhise, the learned counsel for the workman has contended on the other hand that the Civil Suit filed by the workman was not decided on merits and hence the reference is not barred by principles of Resjudicata. He has relied upon the decision of the Supreme Court in the case of Kishan Lal (supra) and that of the Orissa High Court in the case of Laxman Swain (supra). I have gone through the above said decisions. In both the said cases the issue involved was that of applying the principles of resjudicata. It has been held in both the cases that resjudicata would apply only when there is a decision in the earlier proceedings on merit. In the present case the civil suit was not obviously decided on merits but it was withdrawn unconditionally. In my view in this case the issue of resjudicata is not involved but the issue analogues to principle of estoppel is involved. In this case the

workman had already taken recourse to the alternate remedy by filing a civil suit and this suit was withdrawn by him unconditionally. Adv. Shri Diniz, the learned counsel for the employer has relied upon the decision of the Orissa High Court in the case of Biswanath Das & Others (*supra*). In this case the Orissa High Court has held that the right arising out of wrongful dismissal of a workman is a right which arises under the general or common law and not the right which arises under the specific provisions of the Act, and the workman could elect to choose his remedy either by moving the machinery under the Act or by approaching the Civil Court. In the case before The Orissa High Court the workman had moved the Labour Commissioner under Section 12 of the I. D. Act and upon considering the failure report from the Conciliation Officer, the State Government decided not to make the reference. The High Court held that the workman without moving the Conciliation Officer could directly approach the Civil Court for enforcing his right but having elected to seek his remedy under the provisions of the Act, he could not again approach the Civil Court for redressing his grievances arising out of the order of dismissal passed against him. The High Court therefore set aside the decree passed by the Civil Court and dismissed the suit filed by the workman. This decision of the Orissa High Court is based on the decision of the Supreme Court in the case of Premier Automobiles Ltd. v/s Kamalakar Shantaram Wadke, reported in AIR 1975 SC 2238. In this case the Supreme Court held as follows:

".... But where the Industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the Civil Court. It is plain that he can't have both. He has to choose the one or the other."

The above decision of the Orissa High Court and that of the Supreme Court squarely applies to the present case. In the present case also the services of the workman were terminated on account of superannuation. The workman could seek redressal of his grievances by moving the machinery under the I.A.D. Act or by approaching the Civil Court. The workman chose his remedy by moving the Civil Court challenging the action of the employer in superannuating him as can be seen from the copy of plaint Exb. E-2. The workman therefore withdrew the suit unconditionally on the ground that he is not interested in proceeding further with the matter. Therefore once the workman had chosen his remedy by moving the Civil Court, he could not have thereafter again moved the machinery under the Industrial Disputes Act on the same subject matter. The dispute which has been referred by the Government is on the same subject matter that is whether the action of

the employer in superannuating the workman w.e.f. 30-11-92 is legal and justified. Therefore in view of the principles laid down by the Supreme Court in the case of premier Automobiles Ltd. (*supra*) and by the Orissa High Court in the case of Biswanath Das and others (*supra*) the reference is not maintainable and consequently, the same is liable to be rejected. I, therefore hold that the employer has succeeded in proving that the reference is not maintainable. Hence, I answer the issue No. 3 in the affirmative.

8. Issue Nos. 1, 2 & 3 : Since it has held by me that the reference made by the Government is not maintainable, the question of deciding these issues or granting relief to the workman does not arise. I, therefore answer issue Nos. 1, 2 and 4 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference made by the Government is not maintainable. Hence the same is rejected.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/5233

The following Award dated 1-10-1999 in Reference No. IT/27/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 22nd October, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/27/90

Shri Mashnu Gawade,
C/o Adv. P.J. Kamat,
Trionora Apartments, 3rd fl.,
Panaji - Goa. Workman/Party I

V/s

M/s. Sirsat Lodge,
Ansabhat,
Mapusa, Bardez-Goa. Employer/Party II

Workman/Party I- Represented by Adv. Shri P.J. Kamat.
Employer/Party II-Represented by Adv. Shri G.K. Sardessai.

Panaji, Dated: 1-10-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 3rd July, 1990 bearing No. 28/28/90-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Sirsat Lodge, Mapusa, and the owner of Ramchandra Building, Mapusa, in refusing employment to Shri Mashnu, Gawade with effect from 1-6-1989 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/27/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the employer-Party II (for short, "employer") since its inception in the year, 1967 and his last drawn wages were Rs. 450/- p.m. That the employer owns a building known as "Ramchandra Building" at Mapusa wherein its establishment/lodge is situated. That he was employed as a cleaner with the employer and he was being sent for work at the Ramchandra Building during the course of his employment with the employer. That he worked with the employer for more than 25 years honestly, and diligently and on 1st June, 1989 when he reported for work he was orally informed that his services were no more required. That he was not given letter of termination of service nor he was given one month's notice nor he was paid wages in lieu of notice. That thereafter he raised an industrial dispute and upon failure of the conciliation proceedings the present dispute was referred to this Tribunal for adjudication. The workman's contention is that termination of his service by the employer is illegal and unjustified and hence he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb. 6. The employer denied that the workman was employed with the employer and that his last drawn wages were Rs. 450/- p.m. The employer stated that the workman was employed as a domestic cleaner at Ramchandra Building and was paid by the care taker of the said building. The employer stated that the workman not only worked for Ramchandra building but also for other individual offices and clinics. The employer stated that the Ramchandra building and the employer's lodge are the two separate entities in themselves and joining them in the present reference is fatal to the reference. The employer denied that the Ramchandra building is owned by the employer and stated that the workman ought to raise the dispute against a specified employer and not the employers in general as the employer-employee relationship is a precondition to raising of a dispute. The employer stated that since the workman was not in their employment and since his services were not terminated by them, no industrial dispute exists between the workman and the employer. The employer denied that the services of the workman have been illegally terminated by them or that the workman is entitled to the relief of reinstatement with full back wages. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties following issues were framed.

1. Does Party No. 1 prove that he was employed as a cleaner by the Party No. II on payment of Rs. 450/- p.m.?

1A. Whether the joinder of two separate employers in the reference is fatal to the reference ?

2. Does Party No. 1 prove that his services were legally terminated by Party No. II ?

3. If yes, whether Party No. I is entitled to any relief ?

4. What award or order ?

5. My findings on the issues are as follows:

Issue No. 1: In the affirmative.

Issue No. 1A: Does not arise as there is no joinder to two separate employers in the reference.

Issue No. 2: In the affirmative.

Issue No. 4: As per para. 15 below.

Issue No. 5: As per order below.

REASONS

6. Issue No. 1A : It is the contention of the employer that the reference is bad because the reference refers to two employers namely M/s. Sirsat Lodge and Ramchandra Building. According to Adv. Shri Sardessai the learned Advocate for the employer, M/s. Sirsat Lodge and Ramchandra Building are two distinct entities, and a person can be a workman of one employer and not of two employers. His contention is that the reference ought to have referred to only one employer namely M/s. Sirsat Lodge. He has also contended that the owner of Ramchandra Building ought to have been joined as a party

to the proceedings. It is true that the schedule of reference refers to M/s Sirsat Lodge as well as Ramchandra Building. However, I do not agree with the contention of Adv. Shri Sardessai that the reference is fatal because the name of Ramchandra building appears in the schedule of reference. The order of reference dated 3rd July, 1990 clearly states that the dispute exists between the management of M/s Sirsat Lodge, Mapusa and Shri Mashnu Gawade pertaining to the matter of refusal of employment to him. The said order also shows that the copy of the said order was sent to only M/s Sirsat Lodge and not to Ramchandra Building. This clearly shows that Ramchandra Building was never intended to be a party to the proceedings. It is evident that the name Ramchandra Building appeared in the schedule of reference because it was the contention of the workman that M/s Sirsat Lodge is the owner of Ramchandra Building wherein the said Lodge is situated. It is obvious that the words "owner of Ramchandra Building" have been incorporated in the schedule of reference only for the purpose of describing the employer M/s Sirsat Lodge. If the order of reference is read as a whole, the dispute which has been raised by the workman is only against M/s Sirsat Lodge and not against Ramchandra Building also. The statement of claim filed by the workman also shows that it is the case of the workman that he was employed by M/s Sirsat Lodge and sometimes he was sent to work at Ramchandra Building. It may be the case of the employer M/s Sirsat Lodge that Ramchandra Building is not owned by them but so far as the dispute is concerned it is raised only against M/s Sirsat Lodge and the claim of the workman is also against M/s Sirsat Lodge only and also the fact that Ramchandra Building was never a party to the present proceedings, merely because the words "owner of Ramchandra Building" appear in the schedule of reference, it does not mean that two separate employers are joined in the reference and therefore it is fatal to the reference. The reference of the dispute is made at the instance of the workman based upon the allegations made by him. It was the contention of the workman that Ramchandra Building is owned by M/s Sirsat Lodge as can be seen from the statement of claim filed by the workman. This being the case there cannot be any question of joining owner of Ramchandra Building as a party in the proceedings. Besides, the employer never raised any objection in the written statement or during the pendency of the proceedings that the owner of Ramchandra Building has not been joined as a party to the proceedings. In the circumstances, I hold that there is no joinder of two separate employers in the reference and hence the question of the same being fatal to the reference does not arise. I therefore answer the issue No. 1A accordingly.

7. Issue No. 1 : It is the case of the workman that he was employed with the employer M/s Sirsat Lodge and sometimes he was sent to clean the floor or Ramchandra Building where Sirsat Lodge is situated and that his last drawn wages were Rs. 450/- p. m. Whereas it is the case of the employer that the workman was never employed with them but he was employed as a domestic cleaner at Ramchandra Building and was paid by the caretaker of

the said building. Adv. Shri Kamat, the learned Advocate for the workman submitted that the employer has taken contradictory stand in the written statement as in para 1 the employer stated that the workman was never employed with them, in para 5(f) it is stated that he was employed with them from 1976 to 1978. He submitted that the wage register of the year 1978 shows that the workman was employed with the employer and the witness of the employer has also admitted in his cross that the workman was employed with the employer but according to him he worked only till March, 1978. He submitted that the counterfoils of the cheques produced at Exb. 25 show that the last drawn salary of the workman was Rs. 450/- and merely because the said counterfoils carry the rubber stamp "Ramchandra Building", it does not mean that the cheques were issued by the owner of Ramchandra Building as the rubber stamp can be put at any time after the cheque was issued, nor there is any evidence that the said cheques were received by the workman but on the contrary the employer's witness has admitted in his cross that the workman was paid on vouchers. He submitted that the workman has examined one witness namely Shri Rama Gauns and he has supported the case of the workman. He submitted that the workman has denied in his evidence that he was employed with "Ramchandra Building". Adv. Shri Kamat submitted that the witness for the employer has stated in his evidence that the workman left the services of the employer of his own, but he has not produced any resignation letter of the workman or memo issued to him. He relied upon the judgement of the Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co. & Ors reported in 1996 I CLR 172 in support of his contention that if the evidence is word against word, the benefit should go to the workman. He also submitted that the termination of service of the workman amounts to retrenchment and since the provisions of Section 25F are not complied with, the termination of his service is illegal and unjustified. In support of his this contention he relied upon the judgement of the Supreme Court in the case of D.K. Yadav v/s J.M.A. Industries, reported in 1993 II CLR 116.

Adv. Shri Sardessai, the learned Advocate for the employer submitted on the other hand that the employer has denied employer-employee relationship and therefore the burden is on the workman to prove such a relationship and not on the employer. In support of his this contention he relied upon the decision of the Calcutta High Court in the case of Swapan Das Gupta and others v/s The First Labour Court of West Bengal and Others reported in 1976 Lab. IC 202. He submitted that since the employer-employee relationship was denied by the employer the Government could not have made the reference under Section 2A of the Industrial Disputes Act, 1947. He further submitted that no burden is cast on the employer to produce any documents to show that the workman was not in their employment. In this respect he relied upon the judgement of the Kerala High Court in the case of N. C. John v/s Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and others, reported in 1973 Lab. IC 398. He submitted that the employer has produced wage registers which show that

the workman was not in their employment and these wage registers are important as they show the employer-employee relationship. I.e submitted that the employer's witness Shri Suhas Shirsat has deposed on behalf of the employer and not on behalf of the owners of Ramchandra Building, and his evidence shows that the workman was not in the employment of the employer after March, 1978. Adv. Shri Kamat the learned Advocate for the workman, in reply submitted that the employer ought to have led evidence to show that the workman was employed with the owner of "Ramchandra Building" or that he was working in the Ramchandra Building by examining the owner of the said building or by examining any of the persons with whom the workman was said to have been working. In support of his this contention he relied upon the Judgement of the Bombay High Court in the case of Vasant Bhavsar v/s Presiding Officer, First Labour Court, Bombay and others reported in 1993 II CLR 480.

8. Before I proceed to discuss the case on merits, I would first deal with the submission made by Adv. Shri Sardessai, the learned Advocate for the employer, that the Government could not have made the reference under Section 2-A of the Industrial Disputes Act because the employer-employee relationship was denied. He has relied upon the decision of the Calcutta High Court in the case of Swapan Das Gupta (supra) in support of his this contention. I have gone through the said decision of the Calcutta High Court and I do not find that such a proposition has been laid down by the Calcutta High Court. In the said case what the High Court has held is that where an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman there is an action by the employer against the workman and therefore it can be a subject matter of a reference under Section 2-A of the Industrial Disputes Act, 1947 but if the dispute is whether there was any relationship between the employer and the workman, such a dispute cannot be the subject matter of a reference. In the said case the High Court remanded the case to the Labour Court for determining the question whether Shri Dilip Kumar Datta was an employee of Sinclair & Company and further held that the burden was on Dilip Kumar Datta to prove that he was employed with Sinclair and Company. This clearly shows that in the said case the High Court did not hold that the Government could not have made the reference because employer-employee relationship was denied. On the contrary the High Court directed the Labour Court to decide the issue of relationship. In the present case also, the dispute is not whether there was relationship between the employer and the workman but whether termination of service of the workman by the employer is legal and justified. It is the employer who has taken the defence that the workman was not employed with them. While deciding the issue of termination it is permissible for the tribunal to find out whether the workman was employed with the employer or not. I, therefore reject the submission of Adv. Shri Sardessai that the Government could not have made the reference under Sec. 2A of the I.D. Act, 1947. In my view the reference is maintainable.

9. The workman's contention is that he was employed with the employer namely M/s Sirsat Lodge and his last drawn wages were Rs. 450/- p.m. His further contention is that the employer has illegally terminated his services from 1-6-1989. The employer has denied the above contentions of the workman. Adv. Shri Sardessai, the learned Advocate for the employer has submitted that the burden is on the workman to prove the employer-employee relationship. He has relied upon the decision of the Calcutta High Court in the case of Swapan Das Gupta (Supra) in support of his this submission. I have gone through the said decision of the Calcutta High Court. It is true that in the above case the Calcutta High Court has held that when a person asserts that he was the workman of a particular company which is denied by that company, it is for him to prove the said fact and it is not for that company to prove that he was not an employee of the said company, but of some other person. In the said case the Labour Court had placed the burden on the company. In my view the initial burden is always on the person who claims to be the employee of a particular company, to prove this fact and once this initial burden is discharged the burden would shift. It is therefore to be seen whether this burden has been discharged by the workman in the present case.

10. Admittedly no letter of appointment was issued to the workman by the employer. Adv. Shri Kamat, the learned Advocate for the workman has submitted that the employer has taken contradictory stand in the written statement, and I agree with this submission of his. In para. 1 of the written statement the employer stated that the workman was never employed with them, whereas, in para. 5(f) the employer stated that though the workman originally joined the services of the employer and was employed from 1976 to 1978, he was in the employment of "Ramchandra Building". Shri Suhas Shirsat, the employer's witness has admitted in his cross examination the contents of para. 5(f) of the written statement, and has stated that the same are correct. From the statements made in para. 1 and para. 5(f) of the written statement the only inference which can be drawn is that the employer was in a confused state of mind whether to admit that the workman was in their employment or to take the defence that he was in the employment of the owners of Ramchandra Building. This is more obvious because in para. 5(f) of the written statement though the employer admitted that the workman was in their employment from 1976 to 1978 the employer still further stated that he was in the employment of the owners of Ramchandra Building. This statement of the employer is itself self contradictory. If the workman was admittedly in the employment of the employer M/s Sirsat Lodge how he could be at the same time in the employment of the owners of Ramchandra Building? This shows that the employer in any event did not want to admit that the workman was in their employment. However, the fact remains that the workman was employed with the employer as per the admission made by the employer themselves, in the written statement. Besides, this fact is also admitted by the employer's witness Shri Suhas Shirsat in his evidence. In his deposition he has admitted that the workman was

employed with the employer from the year 1975 and he worked till March, 1978, and that he left the job from April, 1978 on his own accord. The employer has produced the wage registers at Exh. 15 colly to show that the workman was employed with the employer till March, 1978. The workman in his cross examination has admitted his signature on the wage register for the month of February and March 1978, and he has further admitted that the wage register for the month of April and May, 1987 does not bear his signature. The workman in his deposition has stated that when he enquired as to why his signature was not being obtained on the register he was told that his salary was being paid by cheque. The statement of the workman that his last drawn salary was Rs. 450/- p.m. is not disputed by the employer in his cross-examination. The counterfoils of the cheque produced at Exh. 25 also show that the last drawn wages of the workman were Rs. 450/- p.m. What is disputed is that when his services are alleged to have been terminated he was working with the employer. The employer has produced the counterfoils of the cheques at Exh. 30 colly to show that when the workman was employed with them he was paid salary by cheque. The workman in his evidence has admitted that his salary was being paid by cheque and that he used to encash it. The employer has also produced the counterfoils of the cheque at Exh. 25 to show that the workman was paid his wages by the owners of "Ramchandra Building" after March, 1978. The counterfoils of the said cheques pertain to the period from 5-5-1988 to 19-6-90. The evidence of the employer's witness Shri Suhas Shirsat on the point of payment of salary of the workman by the owners of Ramchandra Building by cheques (Exh. 25) cannot be believed. In his cross examination, the witness has made contradictory statements. Initially when the counterfoils of the cheques Exh. 25 were shown to him in his cross examination, he stated that he does not know whether the said cheques were bearer cheques or A/c payee cheques or self cheques and also that he does not know whether the said cheques were handed over to the workman by the owners of Ramchandra Building. At another stage when it was suggested to him that the contents of the counterfoils Exh. 25 are not correct, he denied the said suggestion and stated that he had seen the cheques being issued to the workman on some occasions and that sometimes he handed over the cheque to the workman issued to him by his father and also that on some occasions he filled in the cheques issued to the workman. In these circumstances it is difficult to rely upon the counterfoils of the cheques Exh. 25 produced by the employer. Infact the employer ought to have produced the counterfoils of the cheques Exh. 25 in the cross examination of the workman, as it is the case of the workman that he was never employed with the owners of Ramchandra Building. The counterfoils Exh. 25 ought to have been shown to the workman as he was the right person to say whether he had received the said cheques or not. Besides no specific suggestion was put to the workman in his cross examination that he was paid his wages by the owners of Ramchandra Building by cheque. The employer's witness Shri Suhas Shirsat has stated in his cross-examination that he has not seen the workman going to the Bank to encash the cheque but entries in the

pass book show that the cheques were encashed. If this is so, one fails to understand as to why he did not produce the pass book. If the pass book was produced, it would have shown whether the cheques were issued on the account of "Ramchandra Building" and also whether the cheques were encashed. The employer has relied upon the decision of the Kerala High Court in the Case of N.C. John (supra) in support of their contention that the employer cannot be asked to produce any document to show that the workman was not in their employment. I have gone through the said decision of the Kerala High Court and I am of the view that the said decision is not applicable to the facts in the present case. In the case before the Kerala High Court, the employer had denied employer-employee relationship and the Tribunal drew adverse inference against the employer in not producing the books of accounts which according to the Tribunal would have shown that the concerned persons were the employees of the employer. The High Court held that the Tribunal was wrong in drawing adverse inference because the burden was on the employees to prove employer-employee relationship, and since the employer had denied this relationship there was no meaning in production of his books of accounts. In the present case the employer's witness took a definite stand that the pass book would show that the cheques were issued by "Ramchandra Building" and that the said cheques were encashed. The employer had taken a definite stand that the workman was employed with the owners of "Ramchandra Building" and the workman had denied this. It is in these circumstances that the employers ought to have produced the pass book which would have shown whether the workman was employed with the owners of Ramchandra Building or not. Therefore the decision of the Kerala High Court in the case of N.C. John (supra) cannot be applied to the present case. The employer's witness Shri Suhas Shrisat has produced the power of attorney executed in his favour by the owners of Ramchandra Building. He has produced the documents pertaining to Ramchandra Building namely the counterfoils of the cheque Exh. 25 and the certificate dated 29-8-81 Exh. 26 as also the memo dated 4-5-89 Exh. 24 issued by "Ramchandra Building". Therefore he could have very well produced the Pass Book pertaining to the Account of Ramchandra Building in the Bank. In the circumstances there is no evidence on record to show that the cheques Exh. 25 were issued from the account of Ramchandra Building or that the Account No. 3 mentioned on the counterfoils of the cheques Exh. 25 stood in the name of "Ramchandra Building". Merely because there is a rubber stamp "Ramchandra Building" on the counterfoils it does not mean that the counterfoils/cheques pertained to the account of "Ramchandra Building".

11. The employer's witness Shri Suhas Shrisat has produced the show cause notice dated 4-5-89 Exh. 24 purported to have been issued by Ramchandra Building to the workman. No reliance can be placed on the said show cause notice for more than one reason. The employer's contention is that the said show cause notice was issued to the workman by the "Ramchandra

Building". The workman's case is that he was never employed with Ramchandra Building. Therefore the employer ought to have put this document to the workman in the course of his cross examination and get an admission from him that he had received the said show cause notice. However, surprisingly the employer did not do so and instead produced the same through its witness. Perhaps this was done because the employer was aware that the workman would not admit that he had received the said show cause notice from Ramchandra Building. Besides, the employer's witness in his deposition stated that the said show cause notice bears the signature of the workman. However this statement of the said witness is contrary to the endorsement on the said show cause notice. As per the endorsement on the said show cause notice it was received by the wife of the workman and that she had refused to sign. One fails to understand as to how the said show cause notice carries the signature of the workman also when the same was received by his wife? Also, the said cause notice is not signed by any person on behalf of Ramchandra Building. It bears only the rubber stamp of Ramchandra Building. If this show cause notice was really issued to the workman by the owners of Ramchandra Building, the employer would have definitely put this fact to the workman in his cross examination. However, no suggestion at all was put to the workman in his cross examination in this respect. In these circumstances it is difficult to accept that the said show cause notice was issued to the workman by the owners of Ramchandra Building. The employer took the defence that the workman worked with them till March, 1978. The employer's witness Shri Suhas Shirsat has stated in his deposition that the workman worked with the employer till March, 1978 and from April, 1978 he left the services of his own. He has stated in his cross examination that the workman did not give letter of resignation, nor charge sheet was issued to him for remaining absent nor he was paid legal dues including gratuity when he left the services. Once the employer admitted that the workman was in their employment, the burden was on the employer to prove that the workman left the services on his own accord from April 1978. The employer could have examined any of the workers working with them to prove this fact. In my view the employer has failed to prove that the workman left the services from April, 1978 on his own accord. Besides, the workman has examined one witness Shri Rama Gauns in support of his case. In his deposition he has stated that he was working with the employer alongwith the workman and he left the services in 1979. He has further stated that when he left the services the workman continued to work with the employer. The employer has admitted that the witness Shri Rama Gauns was working with them. In the light of what is discussed above I hold that the workman has succeeded in proving that he was employed with the employer as a cleaner and his last drawn wages were 450/- p.m. I, therefore answer the issue No. 1 in the affirmative.

12. Issue No. 2: It has been held by me that the workman was employed with the employer M/s Sirsat Lodge. The

contention of the workman is that the employer terminated his services illegally from 1-6-1989. The defence which has been taken by the employer is that the workman left the services of his own in April, 1978. The employer's witness Shri Suhas Sirsat has admitted in his cross examination that the workman did not give any resignation letter. The Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co. and others reported in 1996 (I) CLR 172 has held that the employer unilaterally cannot say that the workman was not interested in the employment and for this reason, a domestic enquiry has to be held. In that case also the Respondent company had taken up the defence that the services of the Petitioner were not terminated but he had voluntarily left the services, and thus it was a case of voluntary abandonment of service. The High Court held that in case of abandonment of service it is a matter of intention and it depends upon facts of each case. The High Court held that the employer unilaterally cannot say that the workman is not interested in employment, and it is for this reason that a domestic enquiry is to be held. The High Court further held that even before the Labour Court, the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. The High Court has held that if there is no evidence led by the employer and if the Labour Court finds that it is word against word, then the benefit goes to the workman and not to the employer. The High Court has also held that the primary onus to lead evidence to prove abandonment of service is on the employer. The Judgement of the Bombay High Court squarely applies to the present case. In the present case also the employer took the defence that the workman left the services of his own from April 1978. Admittedly no domestic enquiry was held by the employer nor any evidence has been led by the employer to prove that the workman left the services of his own, that is, he abandoned the services. The employer could have examined any of its employees to substantiate its contention that the workman left the services of his own from April 1978. No reliance can be placed on the wage registers produced by the employer as the said registers are maintained by the employer and the workman has stated that when he asked as to why his signature is not being obtained he was told that he was being paid his salary by cheque. The employer's witness has admitted that he did not ask for any resignation letter from the workman nor any charge sheet was issued to him for remaining absent from April 1978. It is also not the case of the employer that any notice was issued to the workman asking him to report for duties. The workman in his evidence has stated that when he reported for duty on 1st June, 1989 he was not allowed to do so. In my view there is no evidence from the employer as regards voluntary leaving of the services by the workman from April, 1978, and applying the principles laid down by the Bombay High Court in the case of Zenith Safe Mfg. Co. Ltd. (supra), in the absence of evidence from the employer, I am inclined to believe the contention of the workman that his services were terminated by the employer from 1st June, 1989 and I do not believe the contention of the employer that the workman left the services of his own

from April 1978. In the light of what is discussed above I hold that the workman did not leave the services of the employer of his own from April 1978 but his services were terminated by the employer from 1-6-1989.

13. Once it is held that the services of the workman were terminated from 1-6-1989 it is to be seen whether this termination is illegal and unjustified as contended by the workman. Adv. Shri. P.J. Kamat, the learned Advocate for the workman has submitted that termination of service of the workman amounts to "retrenchment" and since the employer did not comply with the provisions of Section 25F of the Industrial Disputes Act, 1947, the termination is illegal and unjustified. In support of his this contention he has relied upon the judgment of the Supreme Court in the case of D.K. Yadav (*supra*). Sec. 2(oo) of the Industrial Disputes Act, 1947 defines retrenchment as follows:—

(oo) "Retrenchment" means the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

- (a) voluntary retirement of the working; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health".

In the present case neither the case of the workman falls within one of the exceptions laid down in Sec. 2(oo) of the Industrial Disputes Act, 1947 nor the services of the workman were terminated by way of punishment for misconduct. As mentioned by me earlier the defence of the employer was that the workman had left the services of his own, and I have held that the employer has failed to prove this defence and that infact the services of the workman were terminated. In the case of D.K. Yadav (*supra*) the Supreme Court has held that the definition of "retrenchment" in Section 2(oo) is a comprehensive one intended to cover any action of the management to put an end to employment on an employer for any reason whatsoever. In the circumstances the termination of the services of the workman amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947.

14. Retrenchment procedure has been laid down under Section 25F of the Industrial Disputes Act, 1947. Section 25F states that the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice

or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages per each year completed year of continuous service of any part thereof in excess of six months. These conditions are conditions precedent as held by the Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. v/s Industrial Tribunal Haryana and Others; reported in AIR 1979 SC. Section 25B(2) of the Industrial Disputes Act, 1947 defines "continuous service". It states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in case of workman employed below ground in a mine and 240 days in any other case. In this case it is the case of the employer itself that the workman was employed from the year 1975. The services of the workman are held to be terminated from 1-6-1989. It is therefore established that the workman had worked with the employer for more than 240 days prior to the termination of his service, and hence the provisions of Sec. 25F of the Industrial Disputes Act, 1947 applied to the workman. Admittedly the workman was not given one month's notice nor he was paid wages in lieu of one month's notice. The employer's witness Shri. Suhas Shrisat has admitted in his cross examination that the workman was not paid his legal dues nor he was paid gratuity when he left the services, nor there is evidence that any retrenchment compensation was paid to him. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. (*supra*) has held that failure to comply with prescribing conditions precedent for valid retrenchment in Section 25F renders retrenchment invalid and inoperative. In the present case since there is no compliance of Section 25F from the employer, termination of service of the workman becomes illegal, invalid and inoperative. I, therefore hold that the workman has succeeded in proving that the termination of his service by the employer is illegal and unjustified and hence I answer the issue No. 2 in the affirmative.

15. Issue No. 3: This issue pertains to the relief to be granted to the workman. I have held that the termination of services of the workman is illegal and unjustified. The workman has claimed retrenchment with full back wages. The normal rule is that when the termination of the services of the workman is held to be illegal and unjustified, the workman should be reinstated in service with full back wages. In the present case though the services of the workman were terminated on 1-6-89, the reference of the dispute was made by the Government only on 3rd July 1990, that is, more than a year thereafter. The records of the case also show that the case adjourned several times either at the request of the workman or of the employer or for some other reasons. Also the case was pending for Award for quite some time after the arguments were heard from the parties. The Supreme Court in the case of H.M. T. Ltd., v/s Labour Court, Ernakulam and others reported in 1994 II CLR 22, has held that no party should suffer on account of delay in the decision. In that case the Tribunal had awarded reinstatement with full back wages and this award was upheld by the High Court.

The Supreme Court however modified the award and granted 60% of the wages to the workman mainly on the ground that 14 years had passed since the date of termination of service and it is now accepted that no party should suffer on account of delay in the decision. In my view the principles laid down by the Supreme Court in the above case are applicable to the present case. Besides, there is no evidence that the workman is gainfully employed since the date of termination of his service. Therefore considering all the above aspects, I am of the view that it would be just and proper to reinstate the workman in service with 60% of the back wages from the date of termination of his service. I therefore hold that the workman is entitled to reinstatement in service with 60% of the back wages from the date of termination of his service till the date of the award and to full wages from the date of the Award.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Sirsat Lodge, Mapusa, in refusing employment to the workman Shri Mashnu Gawade with effect from 1-6-1989 is illegal and unjustified. The workman Shri Mashnu Gawade is ordered to be reinstated in service with 60% of the back wages from the date of termination of his service till the date of the Award and he shall be entitled to full wages from the date of the Award. The workman shall also be entitled to continuity in service and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/6091

The following Award dated 11-11-1999 in Reference No. IT/44/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 15th December, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/44/99

Kum. Rakhi Babaji Kerkar,
Guremoroder,
Keldem - Goa

... Workman/Party I

V/s
M/s Indo-Pack, D2/32,
Margao Industrial Estate,
St. Jose de Areal, Goa.

... Employer/Party II

Workman/Party I absent

Employer/Party II-Represented by Adv. Shri B.G. Kamat.

Dated: 11-11-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12th April, 1999 bearing No. IRM/CON/SG/(41)/98/2107 referred the following dispute for adjudication by this Tribunal:

"Whether the action of the management of M/s Indo Pack, St. Jose-de-Areal, Goa, in terminating the services of Kum. Rakhi B. Kerkar, Helper, with effect from 11-7-1998 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/44/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workman/Party I (for short, "workman") appeared in person whereas the Employer/Party II (for short, "employer") was represented by Adv. Shri B.G. Kamat. The workman was given several opportunities to file the statement of claim on her behalf. However, inspite of the opportunities given the workman did not file the statement of claim and remained absent from 22-10-99. The employer was also given opportunity to file its statement of claim/written statement on 4-11-99 but the employer also remained absent and consequently no statement of claim/written statement came to be filed of the employer.

3. The reference of the dispute was made by the Government at the instance of the workman as she

challenged the action of the employer in terminating her services w.e.f. 11-7-98 and as such she raised an industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR. Vol. 71 393 has held that the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that Rule 10B of the Industrial Disputes (Central Rules 1957) which requires the party raising a dispute to file a statement of demands relating to the issue in the order of reference for adjudication within 15 days from receipt of the order of reference and forward the copies to the opposite party clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and the Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. The Allahabad High Court in the case of V.K. Raj Industries v/s Labour Court (1) and Others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable before the Industrial Court but the principles underlying the said Act, are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on that party to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. As stated above in the present case the dispute was raised by the workman and at her instance the Government made the reference and therefore the burden was on the workman to prove that the action of the employer in terminating her services w.e.f. 11-7-98 is illegal and unjustified. Inspite of the opportunities given the workman did not file any statement of claim nor produced any evidence. Therefore there is no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the circumstances, I hold that the workman has failed to prove that the termination of her services by the employer w.e.f. 11-7-98 is not legal and justified and hence I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Indo Pack, St. Jose-de-Areal, Goa, in terminating the services of Kum. Rakhi B. Kerkar, Helper, with effect from 11-7-1998 is legal and justified. It is hereby further held that the workman is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/6092

The following Award dated 21-10-99 in Reference No. IT/40/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa:
R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 15th December, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/40/97

Workmen Rep. by

The General Secretary,
MRF Union, Ponda - Goa.

... Workmen/Party I

V/s

M/s M. R. F. Ltd.,
Tisk Usgao,
Ponda - Goa.

... Employer/Party II

Party I/Workmen - Represented by Adv. Shri V. Lawande

Party II/Employer-Represented by Adv. Shri G. K. Sardessai.

Dated: 21-10-1999

AWARD

In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22nd July, 1997 bearing No. CL/Section10(2)/ID/3227 referred the following dispute for adjudication by this Tribunal.

"Whether the demands of the workers represented by Goa MRF Union, as reproduced in attachment "A" viz-a-viz counter demands of the employer as reproduced in attachment "B" to the Schedule are legal and justified?

If not, to what relief either of the parties are entitled?"

Attachment "A"
Schedule of the Demands

Demand No. 1:

1. Fitment of workmen in to the new 5 grades from the existing 7 grades as agreed to in the Clause CI of the settlement dated 4th March, 1997 - Demand No. 4.

Demand No. 2: Wage Structure Price Rate

Effective from October 1, 1996, basic wages of the workmen reclassified should be revised as under:-

Category	Price rate @ 100% Production		
	From 1-10-1995 to 1-9-1996	From 1-10-1996 to 1-9-1997	From 1-10-1997 onward
Grade A	Rs. 75/- shift	Rs. 85/- shift	Rs. 95/- shift
Grade B	Rs. 65/- shift	Rs. 75/- shift	Rs. 85/- shift
Grade C	Rs. 55/- shift	Rs. 65/- shift	Rs. 75/- shift
Grade D	Rs. 45/- shift	Rs. 55/- shift	Rs. 65/- shift

And

In case any workman not able to achieve 100% production for any reason beyond workmen's control such as power failure, non supply of raw material in time, machine breakdown due to any natural calamity, the workman should be paid full wages/salaries. The same should be paid for weekly off.

Demand No. 3: Service increment/Increments

Effective from January 1, 1995 and every year thereafter, the Company should give service increment at fixed rate per month as mentioned below:-

Grades	Year	Year	Year
	From 1-1-1996 to 31-12-1996	From 1-1-1997 to 31-12-1997	From 1-1-1998 onwards
A	30+	40+	50
B	25+	35+	45
C	20+	30+	40
D	15+	25+	35

Demand No. 4 Service Benefits

The Company should give to every permanent workman Service Benefit who are in service as on October,

1995 and who have completed as on 31-9-1995 number of years of service as mentioned hereunder:-

Length of Service (Counted from the date of joining the company to 30-9-1995)	Amount payable per month
20 to 21 years	Rs. 1,150/-
19 to 20 years	Rs. 1,100/-
18 to 19 years	Rs. 1,050/-
17 to 18 years	Rs. 1,000/-
16 to 17 years	Rs. 950/-
15 to 16 years	Rs. 900/-
14 to 15 years	Rs. 850/-
13 to 14 years	Rs. 800/-
12 to 13 years	Rs. 750/-
11 to 12 years	Rs. 700/-
10 to 11 years	Rs. 650/-
09 to 10 years	Rs. 600/-
08 to 09 years	Rs. 550/-
07 to 08 years	Rs. 500/-
06 to 07 years	Rs. 450/-
05 to 06 years	Rs. 400/-
04 to 05 years	Rs. 350/-
03 to 04 years	Rs. 300/-
02 to 03 years	Rs. 250/-
01 to 02 years	Rs. 200/-
00 to 01 year	Rs. 150/-

And

The service benefits should be considered as wages for all purposes:

Demand No. 5 : Variable Dearness Allowance

Effective from October 1, 1995 the existing scheme of Variable Dearness Allowance should be revised.

The Variable Dearness Allowance in addition to Fixed Dearness Allowance should be paid to every permanent workmen, should be Rs. 3,500/- per month as Variable Dearness Allowance due to merger of 1000 points AAICPI figure (1960 - 100) base.

The above mentioned Variable Dearness Allowance should be paid upto AAICPI points 1300 (1960 - 100) based. In addition to the above for every point rise should be paid as mentioned below:-

Basic Salary Slab	Rate per point over 1300 points
	Rs.
Upto Rs. 1200	5.00
Rs. 1201/- to 1450/-	5.25
Rs. 1451/- to 1700/-	5.50
Rs. 1701/- to 1950/-	5.75
Rs. 1951/- to 2200/-	6.00

Rs. 2201/- to 2450/-	6.25
Rs. 2451/- to 2700/-	6.50
Rs. 2701/- to 3000/-	6.75
Rs. 3001/- to 3300/-	7.00
Rs. 3301/- to 3600/-	7.25
Rs. 3601/- to 3900/-	7.50
Rs. 3902/- and above	7.75

Demand No. 6 :

B. Conveyance Allowance

The Company should pay to every workman Rs. 350/- (Rupees three hundred fifty only) per month as Conveyance Allowance.

C. Education Allowance

The Company should pay to every workman Education Allowance of Rs. 250/- (Rupees two hundred fifty only) per month.

And

The Company should give annual assistance of Rs. 5000/- in the month of May every year to meet the expenses incurred at the start of the School/Colleges academic year.

D. House Rent Allowance

The Company should pay to every workman either Rs. 250/- (Rupees two hundred and fifty only) per month or 35% of his total monthly wages/salaries whichever is higher towards reimbursement of House Rent Allowance.

E. Leave Travel Allowance

- The Company should give to every workman with effect from the year 1995 Leave Travel Allowance as under:-

Years of Service	Amount per Annum
For service upto 5 years	Rs. 4000/- from the year 1995
For service of 5 years and more but less than 10 years	Rs. 5000/- from the year 1995
For service of 10 years and more but less than 15 years	Rs. 6000/- from the year 1995.
For service of 15 years and more	Rs. 7000/- from the year 1995

- Leave Travel Allowance should be paid to every workman as reimbursement towards travelling expenses.
- Leave Travel Allowance should be paid once in a year only to such of the workmen who proceed on Privilege Leave of atleast 5 days.

- Leave Travel Allowance should be allowed accumulation for 2 years.
- For the purpose of computing years of service date of joining should be taken.
- Leave Travel Allowance should be given 10 days before employee proceeding on Privilege Leave.

M. Shift Working Allowance

Any employee who is required to work in General/First shift should be paid 10% of Basic+DA+HRA per shift, for Second shift 15% of Basic+DA+HRA per shift and 20% of Basic+DA+HRA per shift for Third shift working.

N. Washing Allowance

The company should pay to every workman washing allowance of Rs. 200/- (Rupees two hundred only) per month.

Demand No. 7 - Subsidy towards Credit Co-op. Society Loan

Effective from the year 1996 the Company should give interest free loans to be repaid in 48 instalments.

The loan to be given as per the Rules and Bye laws of MRF Employees Credit Co-op. Society.

Length of confirmed Service	Interest free Loan
Service as on 30-9-95	Amount (Rs.)
Upto 5 years of Service	10,000/-
5 to 10 years of service	15,000/-
10 to 15 years of service	25,000/-
15 years and above	35,000/-

Demand No. 8 : Period of Settlement

The period of settlement should be for 3 years effective from October 1, 1995 to 30th September, 1998.

Allocation of Liability

9. To allocate percentagewise the total increase in the cost per employee into the various cost groups as agreed in clause D(iii) of the Settlement dated 4th March, 1997.

Attachment "B"

1) 7 Day Running for full Plant.

To increase productivity and generate more employment, the full plant will run on all 7 days of the week instead of only a part of the plant which is running at present following a staggard weekly off system for the workmen wherever required.

2. On receipt of the reference a case was registered under No. IT/40/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workmen-Party I (for short,

"Union") filed its statement of claim at Exb. 5 in support of its demands mentioned at attachment "A" to the schedule of reference. The employer-Party II (for short, "employer") filed their written statement at Exb. 7 denying that the workmen are entitled to the demands raised by them through the union. When that matter was pending the union filed application dated 3-6-98 Exb. 8 before this Tribunal stating that the union does not wish to pursue the present reference in view of the pendency of the reference in the matter of charter of demands raised by the Goa MRF Employees, the Petitioner in the Writ Petition No. 135/97 and which reference is presently pending before this Tribunal registered as IT/33/97. With a view to avoid multiplicity of litigation and in consonance with the prayers made in the said Writ Petition the union prayed that necessary orders be passed in the matter. The employer did not object to the said application filed by the union. However, since once the reference has been made by the Government, the same has to be adjudicated upon by the Tribunal and the same is to be disposed of by an award, the union was asked to take proper steps in the matter.

3. The union thereafter filed an application dated 2-7-98 at Exb. 11 praying that the application dated 3-6-98 filed by the union be treated as application for withdrawal of the reference. Subsequently a copy of the order dated 3rd July 1998 passed by the Hon. Bombay High Court in Writ Petition No. 350/97 was filed before this Tribunal along with the consent terms dated 3-7-98 filed by the Union and the employer in the said writ petition. I have gone through the order dated 3-7-98 passed by the Hon. Bombay High Court in Writ Petition No. 350/97 as well as the consent terms filed by the union and the employer in the said Writ Petition. The Hon. High Court has passed the order in terms of the consent terms dated 3-7-98 filed by the union and the employer before that court. The Hon. High Court disposed of the said Writ Petition No. 350/97 in terms of the said consent terms. As per the clause 1 of the consent terms dated 3-7-98 filed by the union and the employer in Writ Petition No. 350/97 both parties agreed to quashing of the reference No. IT/40/97 i.e. the present reference. Since the parties themselves agreed to the quashing of the reference and the Hon. Bomaby High Court disposed of the Writ Petition No. 350/97 in terms of the said consent terms the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive in view of the consent terms dated 3-7-98 and the order dated 3-7-98 passed by the Hon'ble Bombay High Court in Writ Petition No. 350/97.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),

Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/6094

The following Award dated 23-11-99 in Reference No. IT/45/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa,

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary (Labour).

Panaji, 15th December, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/45/94

Shri Ulhas N. Naik,

Rep. by The President,

K.T.C. Drivers & Allied Employees,

Association,

M-25, Housing Board Colony,

Margao - Goa.

... Workman/Party I

V/s

M/s Kadamba Transport Corporation Ltd.,

Panaji - Goa.

... Employer/Party II

Workman/Party I - Represented by Shri K. V. Nadkarni.

Employer/Party II-Represented by Adv. Shri C. J. Mane,

Dated: 23-11-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22-2-94 bearing No. 28/3/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd., Panaji, in refusing employment to Shri Ulhas N. Naik, Helper/Cleaner, with effect from 1-10-92 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/45/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short, "workman") filed his statement of claim which is at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with Employer/Party II (for short, "employer") as a Helper/Cleaner in the permanent category of employees. That while he was working at the Margao Depot he received a transfer order dated 6th June 1992 sent by the Personnel Manager transferring him from Margao Depot to Central Workshop at Porvorim. That by representation dated 11-6-92 he pointed out that the transfer order was arbitrary and vindictive besides being in violation of the Circular dated 25-5-92 under which it was notified that the services of only that employee can be transferred who has completed 3 years service in one place and since he had not completed even 2 years of service at Margao Depot he requested the Personnel Manager to reconsider his decision and cancel the transfer order. That on 1-7-92 the Personnel Manager called him and asked him to give an application stating that he is staying with his old and aged parents and his transfer would cause hardship to them. That accordingly he made such application at the very moment and immediately thereafter the Personnel Manager gave him the copy of the letter dated 1-7-92 addressed to the Margao Depot Manager informing him that the transfer order dated 6-6-92 issued to the workman is kept in abeyance and further asked him to utilise his services at Margao Depot. That at the end of the working hours on 30-9-92 he received a fresh order from the Personnel Manager stating that he is transferred to Panaji depot instead of Central Workshop, Porvorim and advised him to report to the Depot Manager at Panaji. That accordingly he approached the Depot Manager, Margao on 1-10-92 for the release order to enable him to report at the place of transfer. That he was told that the release order has been posted to his residential address and when he asked for the copy of the said order the same was refused and the Depot Manager instructed the security staff at the Margao Depot not to allow him to attend his regular duties at the Margao Depot and as such he was refused employment from 1-10-92. That thereafter he made several trips to the Margao Depot and met the Depot Manager and requested him to either issue to him the relieving order or permit him to report for duties at Margao Depot, but the Depot Manager refused to do so. That he made efforts to report at Panaji Depot and on meeting the Depot Manager at Panaji, showed the original order to him but he refused to take him on duty under the pretext that he had not produced the relieving order. That he also met the Personnel Manager at the Panaji office since the transfer order was issued by him and appraised him of the situation and the refusal of employment to him by the Depot Manager. That during his last visit to the Personnel Manager on 16-11-92 the Personnel Manager total him and to the other two persons who had accompanied him that he had send a reminder to the Margao Depot

Manager but he has not received any reply from him. That thereafter he made a complain u/s 35 C of the Certified Standing Orders of the employer to the Managing Director on 7-11-92 and submitted to him all the necessary details and a copy of the said complaint was addressed to the Dy. Labour Commissioner, Margao requesting him to intervene in the matter. That the Dy. Labour Commissioner held conciliation proceedings and on 23-12-92 it was agreed between the workmen and the management's representative namely the Personnel Manager Shri Saudagar that the workman shall report to Depot Manager at Margao within one week and accordingly the Dy. Labour Commissioner by letter dated 28/29-12-92 advised the workman to report to the Depot Manager at Margao. That as per the advise of the Dy. Labour Commissioner he reported to the Margao Depot Manager on 5-1-93 along with the letter dated 5-1-93 in the presence of witnesses but the Depot Manager refused to take him back on duty also refused to take the said letter. That on 6-1-93 he met the Dy. Labour Commissioner and he informed him the above facts. That thereafter several meetings were held but the matter could not be settled. That in the month of April 1993 he received a telegram from the management asking him to report at Panaji Depot and accordingly on 16-4-93 he went to Panaji Depot for reporting for duties and submitted his joining report dated 16-4-93 but he was refused employment even at the Panaji Depot. That on account of the attitude taken by the employer the matter could not be settled and the failure report was submitted by the Dy. Labour Commissioner to the Government. The workman contended that the action on the part of the Margao Depot Manager and the Panaji Depot Manager in refusing to allow him to report for duty is illegal and bad in law. The workman contended that the action on the part of the employer in refusing employment to him from 1-10-92 is illegal and bad in law and therefore he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 6. The employer stated that vide order dated 9-9-92 the workman was informed that the earlier transfer order dated 6-6-92 which was kept in abeyance was brought into effect immediately and his services stood transferred to Central Workshop, Porvorim, with immediate effect. The employer stated that the workman was relieved by the Depot Manager by his order dated 14-9-92 with instructions to him to report to the Depot Manager at Central Workshop, Porvorim on 15-9-92 at 9.00 a.m. and when the workman refused to take the relieving order it was displayed on the notice board. The employer denied that the workman made any representation to the Personnel Manager vide his letter dated 11-6-92. The employer stated that the transfer order dated 6-6-92 was kept in abeyance at the request of the workman. The employer denied that the workman approached the Depot Manager on 1-10-92 as contended by him. The employer denied that any complaint was made by the workman dated 7-11-92 to the Managing Director. The employer stated that the workman did not report for duties in spite of being directed by the Dy. Labour Commissioner

by his letter nor he reported for duties inspite of the fact that a telegram was sent to him asking him to report for duties. The employer denied that employment was refused to the workman and further denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exh. 7.

4. On the pleadings of the parties, following issues were framed at Exh. 8.

1. Whether the Workman/Party I proves that the employer/Party II refused employment to him w.e.f. 1-10-92?
2. Whether the Workman/Party I proves that the action of the employer/Party II in refusing employment to him w.e.f. 1-10-92 is illegal and justified?
3. Whether the workman/Party I is entitled to any relief?
4. What Award?
5. My findings on the issues are as follows:

Issue No. 1 In the affirmative.

Issue No. 2 In the affirmative.

Issue No. 3 As per para. 13 below

Issue No. 4 As per order below

REASONS

6. Issue Nos. 1 and 2: Both these issues are taken up together because they are interrelated. The contention of the workman is that by transfer order dated 30-9-1992 he was transferred to Panaji Depot from Margao Depot and when he met the Depot Manager at Margao on 1-10-92 and asked for the relieving order he was told that the same order would be sent to him by post. His further contention is that he again met the Depot Manager on 10-10-92 as he had not received the relieving order and that he was stopped at the gate by the security and was not allowed to enter the premises on the ground that his services were transferred to Panaji. The contention of the workman therefore is that since he was not issued the relieving order he was not allowed to report for work at the Margao Depot from 1-10-92, and hence the same amounted to refusal of employment to him from 1-10-92 and this refusal is illegal and unauthorised. The contention of the employer on the other hand is that by order dated 6-6-92 Exh. W-3 the workman was transferred to Porvorim Depot and the said order was kept in abeyance as per the request made by the workman vide his letter dated 1-7-92 Exh. W-5. The contention of the employer is that another transfer order dated 9-9-92 Exh. E-1 was issued to the workman transferring him from Margao Depot to Porvorim Depot but the workman refused to accept the said order and therefore the said order was displayed on the notice board on 15-9-92 and the relieving order was sent to him at his residential address by registered post on 25-9-92 which was returned unserved with the remark "unclaimed" (Exh. E-3). It is further the

contention of the employer that after the said transfer order the workman neither reported at Margao depot nor at Porvorim depot and there was no refusal of employment as contended by the workman.

7. The workman and the employer have led evidence oral as well as documentary in the matter. The workman has examined himself and other three witnesses namely Anthony Fernandes, Anand Ramnathkar, and Dhananjay Naik whereas the employer has examined the Depot Managers Shri Sanjay Ghate and Anil Prabhu in support of their case. It is an admitted fact that the workman was working at Margao depot as a helper. It is also an admitted fact that by order dated 6-6-92 (Exh. W-3) the workman was transferred from Margao depot to Central Workshop at Porvorim and the said transfer order was kept in abeyance as per the representation dated 11-6-92 (Exh. W-4) made by the workman and he continued to work at Margao Depot which is evident from the letter dated 1-7-92(Exh. W-6) written by the Personnel Manager to the Depot Manager, Margao. Now the question is whether employment was refused to the workman by the employer as contended by him.

8. The workman in his evidence has stated that he received a transfer order dated 30-9-92 stating that he stood transferred to Panaji depot instead of at Central Workshop at Porvorim. He has produced the said transfer order at Exh. W-7. This order supports the contention of the workman that he was transferred at Panaji depot and the transfer was with immediate effect. This order also shows that the workman was working at Margao depot when it was issued to him and the Depot Manager was asked to relieve the workman immediately. The evidence which has come on record on this aspect through the witnesses of the employer is confusing and no reliance can be placed on the same. The Depot Manager Mr. Sanjay Ghate in his deposition has not referred to the order dated 30-9-92 at all. He has deposed only on the aspect of transfer order dated 9-9-92(Exh. E-1) issued to the workman whereby he was transferred to Central Workshop at Porvorim and the issuing of relieving order dated 14-9-92 to him. The workman in his cross examination denied that he had received any transfer order dated 9-9-1992 or that he was relieved from Margao depot on 14-9-92 so as to enable him to report at Central Workshop, Porvorim. The employer's witness Mr. Sanjay Ghate, the Margao Depot Manager, has stated in his deposition that the workman refused to accept the relieving order dated 14-9-92 and therefore it was displayed on the notice board alongwith the transfer order, and thereafter the said relieving order was sent to the workman by registered post at his residential address as he remained absent from 15-9-92 and that the same was returned unserved with postal endorsement "unclaimed". The employer has produced the envelope at Exh. E-3 which carries the endorsement "unclaimed". The said witness has further stated that he did not meet the workman after 15-9-92 nor he reported to him. The said witness has also produced the letter dated 24-9-92 at Exh. 3 which was sent to the workman. In the said letter it is mentioned that the

workman should make correspondence with the Works Manager at Porvorim and not to the Depot Manager at Margao. This letter was returned unserved. It is the case of the workman that he worked at Margao depot till 30-9-92 on which date of the transfer order dated 30-9-92 transferring him to Panaji depot was served on him. Now, if it is the case of the employer that after 15-9-92 the workman did not work at Margao depot or that he remained absent from 15-9-92, the question is how the transfer order dated 30-9-92 came to be served on him at Margao depot? The said order is produced at Exb. W-7 and the same is addressed to the workman at the Margao depot. The said order refers to the order dated 9-9-92 and states that the workman is transferred to Panaji depot instead of at Central workshop with immediate effect. By the said order the workman was asked to report to the Manager of Panaji depot and the Margao depot Manager was asked to relieve the workman immediately. The employer has not succeeded in proving absenteeism of the workman from 15-9-92 at Margao depot. If according to the employer's witness Shri Ghate the workman had applied for earned leave from 15-9-92 as mentioned by Shri Ghate in his letter dated 24-9-92 Exb. E-3, this should have been suggested to the workman in his cross examination or the leave application ought to have been produced. Neither of the thing was done. Besides, the employer's witness Shri Cuncolienkar, who was working as the Works Manager at Central Workshop at Porvorim in the year 1992 has stated in his cross examination that if any employee working under him was transferred from his department to somewhere else, the copy of the transfer order is received by him. He has admitted in his cross that the copy of the transfer order dated 30-9-92 Exb. W-7 was not endorsed to him nor he received any order from the employer asking him to relieve the workman from the Porvorim workshop. He has further admitted that in the transfer order dated 30-9-92 Exb. W-7 the Margao depot Manager was asked to relieve the workman and that if the workman had been working at Porvorim workshop he would have received the order asking him to relieve the workman from Porvorim workshop and to transfer all his records at the place where he is transferred. The evidence on record therefore clearly shows that even though there was a transfer order dated 9-9-92 transferring the workman to Central workshop at Porvorim, it was not served on him and he continued to work at Margao depot till 30-9-92 on which date he was served with the said transfer order dated 30-9-92 Exb. W-7. The order dated 30-9-92 Exb. W-7 shows that it was addressed to the workman on the Margao depot address.

9. Now the question is whether the workman was refused employment from 1-10-92 as contended by him. The order dated 30-9-92 Exb. W-7 states that the workman

is transferred to Panaji depot with immediate effect. In the said order the Margao depot Manager was asked to relieve the workman immediately, and the copy of the said order was sent to him. The Margao depot Manager Shri Vijay Ghate in his evidence has not denied that he received the copy of the order dated 30-9-92. However, his case is that he could not issue the relieving order because the workman had not reported for work after 15-9-92 at the Margao depot. This statement of Shri Ghate cannot be believed because if the workman had not reported at Margao depot after 15-9-92 how the transfer order dated 30-9-92 was served on him? The workman in his evidence has stated that he received the said order on the same day. In cross examination of Shri Ghate it was suggested to him that the transfer order was served on the workman by him on 30-9-92. He has further stated in his cross that he does not have the copy of the transfer order. This statement of the witness cannot be believed. The copy of the order ought to be the records of the Margao depot. The only inference which can be drawn is that the witness is deliberately hiding the said document because if it is produced it would show how the said order was served on the workman and it would also prove that he was working at Margao depot. The employer has not produced any document to prove that the workman had not reported for work after 15-9-92. The attendance card of the workman would have proved this fact but the employer did not produce the same nor the employer produced the leave application of the workman whereby the workman is alleged to have applied for earned leave from 15-9-92. No suggestion whatsoever was put to the workman in his cross examination that he did not work at Margao depot after the transfer order dated 9-9-92 was issued to him or that he applied for earned leave from 15-9-92. On the contrary a contradictory suggestion was put to him that he was relieved on 14-9-92 and that he did not report at Porvorim Central Workshop. The employer's witness Shri Ghate, the Margao Depot Manager on the other hand has stated in his evidence that the workman had refused to accept the relieving order and therefore it was sent to him by registered post. I have already held earlier it is established from the evidence on record that the workman was working at the Margao depot when the order dated 30-9-92 was served on him. Therefore the contention of the Depot Manager Shri Ghate that he could not issue relieving order to the workman because he had not reported for work from 15-9-92 cannot be believed. If the Depot Manager was unable to issue the relieving order to the workman he would have definitely written about it to the Personnel Manager, who had asked him to relieve the workman immediately. There is no evidence that such a letter was written by the Depot Manager. The workman has stated in his deposition that he met the

Depot Manager Mr. Ghate on 1-10-92 and asked for the relieving order and that he was told that it would be sent to him by post. He has stated that he again went to meet the Depot Manager Mr. Ghate on 10-10-92 since he had not received the relieving order, but he was stopped at the gate by the security on the ground that his services were transferred at Panaji. He has further stated that thereafter he came back to Panaji and met the Personnel Manager who asked him to meet the Depot Manager and that since he was not being issued the relieving order and was not able to resume his duties at Panaji, he made a complaint to the Managing Director dated 17-11-92 with a copy endorsed to Dy. Labour Commissioner (South) Margao. He has produced the said complaint at Exb. W-8, who fixed a meeting on 23-12-92. He has stated that in the said meeting it was agreed that the workman would report to the Depot Manager, Margao within one week and he had produced the letter dated 28-12-92 at Exb. W-9 written by the Dy. Labour Commissioner to this effect. He has stated that he reported for work at Margao depot with joining report but the Depot Manager Mr. Ghate refused to allow him to resume his duties and also to accept the joining report. He has produced the joining report at Exb. W-10 which according to him he has submitted in the presence of Mr. Dhananjay Naik and Mr. Anant Ramnathkar. He has also produced the copy of the complaint Exb. W-11 made by him to the Dy. Labour Commissioner, Margao on 6-1-93 about refusal of employment to him. The workman stated that the conciliation proceedings ended in failure on 5-4-93 and he produced the minutes of the meeting dated 5-4-93 at Exb. W-13. He has stated that thereafter he received a telegram dated 15-4-93 asking him to report for duties immediately at Panaji depot and hence on 16-4-93 he reported at Panaji depot and submitted his joining report, but the Depot Manager refused to accept the same and also refused to take him on duty in the presence of one Mr. Joaquim Fernandes, Sudesh Naik and Joao Mendes. He has produced the joining report dated 16-4-93 at Exb. W-15 as also the minutes of the meeting dated 4-5-93 at Exb. W-16 and the failure report dated 24-12-93 at Exb. W-17. In the cross examination of the workman only suggestions have been put to him denying the statements made by him in his deposition. The employer has not been able to extract anything favourable to it in the cross examination of the workman.

10. The workman has examined three witnesses in support of his case. The witness Anand Ramnathkar and Dhananjay Naik have deposed on the incident of 5-1-93 when the workman approached the Margao Depot Manager Mr. Ghate to report for duty. The witness Mr. Anant Ramnathkar has stated that he is working with the

employer and that in the year 1993 he was working at Margao depot and the workman was also working there as a helper. He has stated that on 5-1-93 he accompanied the workman alongwith Mr. Dhananjay Naik to the Depot Manager Mr. Ghate. He has stated that the workman handed over the letter dated 5-1-93 to Mr. Ghate but he refused to accept the same. He has stated that the workman took their signatures on the said letter as the witnesses to the incident of refusal by Mr. Ghate to accept the said letter dated 5-1-93. He has identified his signature on the said letter dated 5-1-93 Exb. W-10 at point "B". The statement made by this witness are corroborated by the other witness Shri Dhananjay Naik. He has also stated that in the year 1993 he was working at Margao depot and that he know the workman who was working as helper/cleaner. He has stated that the workman wanted to report for work on 5-1-93 and hence he approached the Depot Manager Mr. Ghate who did not allow him to report for duty. He has stated that the workman requested him and Mr. Anant Ramnathkar to be witnesses to the incident of refusal. He has stated that Mr. Ghate did not allow the workman to report for duty though he was shown the letter dated 28-12-92 Exb. W-9 and also refused to accept the letter dated 5-1-93 Exb. W-10. He has identified his signature on the letter dated 5-1-93 Exb. W-10 at point 'A'. In the cross examination of both these witnesses only the suggestions were put denying the incidents of 5-1-93. It was also suggested to both these witnesses that Mr. Ghate had not reported for duty on 5-1-93. This suggestion is contrary to the admission made by Mr. Ghate in his cross examination. Mr. Ghate has admitted in his cross that he was on duty on 5-1-93 at Margao depot. Suggestion was also put to the workman in his cross examination that the witnesses Shri Anand Ramnathkar and Shri Dhananjay Naik whose names are mentioned in the report dated 5-1-93 Exb. W-10 were not working with the employer and this suggestion was denied by the workman. However the employer's witness Shri Sanjay Ghate himself has admitted in his deposition that he knows Shri Ramnathkar and Shri Dhananjay Naik because they were working with the employer at Margao depot when he was working there as Depot Manager. The above evidence clearly shows that the employer was taking contradictory stands and in view of the contradictory stands taken by the employer there is no reason to disbelieve the workman and his witness that the workman had approached the Margao Depot Manager on 5-1-93 for reporting for duty alongwith the letter dated 5-1-93 Exb. W-10 and Depot Manager refused to accept the said letter as also did not allow the workman to report for work. The employer's witness Shri Ghate has admitted in his cross that he had received the copy of the letter dated 29-12-92 Exb. W-9 whereby Dy. Labour

Commissioner had asked the workman to report to the Depot Manager, Margao, within one week. Shri Ghate was the Margao Depot Manager at that time. If the workman had not reported for work as per the said letter why the Margao Depot Manager did not report to the Dy. Labour Commissioner about this fact. In fact it was his duty to report to the Dy. Labour Commissioner that inspite of his letter the workman did not report. On the other hand the workman has produced a letter dated 6th January, 1993 Exb. W-11 addressed to the Dy. Labour Commissioner wherein he has stated that he reported to the Margao Depot Manager on 5-1-93 with joining report alongwith two witnesses and that he was not allowed to report for duty. Therefore from the evidence discussed above, I hold that the workman has succeeded in proving that he reported for duty at the Margao depot on 5-1-93 but he was not allowed to report for duty.

11. It is the case of the workman that after the conciliation proceedings had ended in failure on 5-4-93 he received a telegram dated 15-4-93 from the employer asking him to report for duty immediately at Panaji depot. The said telegram has been produced by the workman at Exb. W-14. The workman in his deposition has stated that on receipt of the telegram he reported for duty at Panaji depot on 16-4-93 alongwith the joining report, but the Panaji Depot Manager refused to take him on duty and to accept the joining report in the presence of one Shri Joaquim Fernandes, Shri Sudesh Naik and Shri Joao Mendes. He produced the joining report dated 16-4-93 at Exb. W-15. He stated that he reported the matter to the Dy. Labour Commissioner orally who fixed the meeting on 4-5-93. The workman produced the minutes of the meeting dated 4-5-93 at Exb. W-16. In his cross examination only suggestion was put to him that he did not report for duty along with the joining report on 16-4-93 because he was gainfully employed, which suggestion he denied. The contention of the workman that he reported for duty on 16-4-93 is supported by his witness Shri Joaquim Fernandes. He has stated that in 1993 he was working at the Panaji depot. He has stated that on 16-4-93 he had accompanied the workman to the depot manager who refused to accept the letter/joining report dated 16-4-93 Exb. W-15, and also did not allow him to report for work though the telegram Exb. W-14 was shown to him. In his cross examination it was not disputed that in the year 1993 he was working at Panaji depot. He admitted that on 16-4-93 the Depot Manager was not in the office but one Mr. Narayan Naik was in charge of the depot and he was in the office and that said Mr. Naik refused to accept the letter Exb. W-15. The employer has examined one Mr. Anil Prabhu, who was working as the Panaji Depot Manager in the year 1993.

His evidence as regards the incident on 16-4-93 is contrary to the suggestion put to shri Joaquim Fernandes the witness of the workman, in his cross examination. According to Mr. Anil Prabhu he was present in his office at Panaji depot on 16-4-93 whereas as mentioned earlier, it was suggested to the witness Shri Joaquim Fernandes that on 16-4-93 Depot Manager was not in the office but one Mr. Narayan Naik was in charge of the Depot and he was in the office. Besides Mr. Anil Prabhu was asked to produce his attendance records of 16-4-93 and he agreed to produce the same. He was given an opportunity to produce the same but he did not do so on the ground that the same is not available. Vis-a-vis the suggestion put to the workman's witness Shri Joaquim Fernandes that Mr. Anil Prabhu was not present in the Panaji depot office on 16-4-93 and the statement of Mr. Anil Prabhu that he was present in the office, and his further statement that he is not able to produce his attendance records of 16-4-93 because they are not available, the only reasonable inference which can be drawn is that the witness Shri Anil Prabhu does not want to produce the said record because it would show whether he was present in the office on 16-4-93 or not. It is difficult to believe that his attendance record of 16-4-93 is not available. The minutes of the meeting dated 4-5-93 Exb. W-16 held before the Dy. Labour Commissioner show that in the said meeting the workman had brought to the notice of the Dy. Labour Commissioner that he was not allowed to report for work on 16-4-93. Shri Anil Prabhu, the Panaji Depot Manager has admitted in his deposition that he received the copy of the transfer order dated 30-9-92 Exb. W-7 which was endorsed to him. According to him the workman did not report him in response to the transfer order. The said transfer order is dated 30-9-92 and it states that the transfer is with immediate effect and the workman should report to the Panaji Depot Manager for further orders. It according to Mr. Prabhu the workman did not report in response to the said transfer order, why he did not report the matter to the Personnel Manager or any other authority immediately and made the report to the Personnel Manager only on 17-5-93? In the normal course ought to have made the report immediately when the workman failed to report to him in response to the transfer order.

12. In the light of the evidence discussed above, in my view the workman has succeeded in proving that the employer refused employment to the workman with effect from 1-10-92 and there is no evidence on record to show that the refusal is legal and justified. I, therefore hold that the employer refused employment to the

workman with effect from 1-10-1992 and this action of the employer, of refusal of employment to the workman is illegal and unjustified. I therefore answer the issue Nos. 1 and 2 in the affirmative.

13. Issue No. 3: Once it is held that the refusal of employment to the workman from 1-10-92 is illegal and unjustified, the next question is to what relief the workman is entitled to. It is a general rule that when refusal of employment is held to be illegal and unjustified, the workman should be reinstated in service with full back wages, unless there are reasons for not doing so. One of the factors to be considered is whether the past conduct of the workman was good or not and the other is whether he was gainfully employed or not. In the present case there is nothing on record to show that the past conduct of the workman was not good. On the contrary the employer's witness Shri Sanjay Ghate who was working as the Depot Manager at Margao when the workman was working there has stated in his deposition that during the time when he was working at Margao he found the work of the workman satisfactory. There is also no evidence on record to show that the workman was gainfully employed subsequent to the refusal of the employment to him. Except for putting suggestion to the workman that he was gainfully employed, which suggestion he denied, the employer did not produce any evidence to prove that the workman was gainfully employed. I, therefore do not find any reason to deviate from the normal rule that the workman is entitled to reinstatement in service with full back wages and other consequential benefits once it is held that the refusal is illegal and unjustified. I, therefore hold that the workman is entitled to reinstatement in service with full back wages and continuity in service besides all other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation, in refusing employment to the workman Shri Ulhas Naik, Helper/Cleaner, with effect from 1-10-92 is illegal and unjustified. The workman Shri Ulhas Naik is hereby ordered to be reinstated in service with full back wages and continuity in service. He shall be also entitled to all other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/6093

The following Award dated 11-10-99 in Reference No. IT/17/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa,
R. S. Mardolker, Commissioner & Ex-Officio
Joint Secretary (Labour).

Panaji, 15th December, 1999.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/17/98

Workmen, Linc Pen and Plastics Ltd., Corlim Industrial Estate, Corlim, Ilhas-Goa v/s
Rep. by Goa Trade & General Workers Union, Velhos Building, 2nd fl., Panaji - Goa. Workman/Party I

v/s

The Director, M/s Linc Pen and Plastics Ltd., Corlim Industrial Estate, Corlim, Ilhas-Goa. Employer/Party II

Workman/Party I - Represented by Adv. Shri R. Mangeshkar.

Employer/Party II-Represented by Adv. Shri M.S. Bandodkar.

Dated: 11-10-1999

AWARD

In exercise of the powers conferred under sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5th March, 1998, bearing No. CL/3-11(16)/97/7671 referred the following dispute for adjudication by this Tribunal.

"Whether the Chapter of Demands served by the Goa Trade and Commercial Workers' Union vide their letter No. Lt/S.M. PENS and Plastics/Linc P&P/COD/01/96 dated 8-12-96 on behalf of the workmen employed by M/s. Linc Pen and Plastics Ltd., in their factory at Corlim Industrial Estate is legal and justified?

If so, what relief workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/17/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb. 3 in support of demands raised against the Employer-Party II (for short, "employer") vide letter dated 8-12-96. In the statement of claim the union contended that their demands are legal and justified. The union also filed an application for interim relief praying that the amount of Rs. 1000/- be paid to each workman per month by way of interim relief pending the hearing and final disposal of the reference. The employer filed written statement at Exb. 5 resisting the claim by the union. The union denied that the demands raised by the union are legal and justified. The employer also filed reply to the interim relief application filed by the union denying that the workmen are entitled to any interim relief as claimed, during pendency and final disposal of the reference.

3. On 29-7-99 when the case was fixed for hearing the union and the employer submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 24-7-99 at Exb. 21. The parties also filed an application praying that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 24-7-99 Exb. 21.

ORDER

1. It is agreed between the parties that the Management shall pay to all the workmen whose names are mentioned in the Annexure "A" to the settlement, their unpaid wages for the month of November & December, 1998 and January, 1999 as per the Annexure "A" to the settlement and shall also pay Notice Pay, Compensation arising out of the closure, Bonus, Leave Salary and Ex-gratia

amount as shown in Annexure "A" to the settlement.

2. It is agreed between the parties that the workmen shall accept the amount mentioned in Annexure "A" to the settlement including Ex-gratia, treating themselves that they have left/resigned the employment of the Company.
3. It is agreed between the parties that the Workmen shall accept the amount as mentioned in Annexure "A" to the settlement in full and final settlement of their all claims out of their employment with the Company and they further confirm that they have no claim of re-instatement or re-employment.
4. It is agreed between the Parties that the Workmen/Union shall make an application, enclosing the copy of the settlement, before the Hon'ble Tribunal in the Ref. IT/17/98 mentioning therein that the subject matter of the reference have been fully and finally settled between the Management and the Workmen/Union and seek an Order/Award from the Tribunal for disposing the subject reference in terms of this settlement.
5. It is agreed between the Parties that the Management shall pay the amount mentioned in Annexure "A" on the date of signing of the settlement to all the Workmen and said amount shall be paid in Cheque. It is further agreed between the parties that 5% deduction would be made towards union contribution by each workmen from the total amount payable to such each workmen which comes to 10,038/- (Rupees ten thousand and thirty eight only) and this amount would be handed over to the union representative by the management on the date of signing of this settlement.
6. It is agreed between the parties that in view of the settlement, the Workmen and the Management co-operate to withdraw all the pending cases before different Authorities.

No order as to costs. Inform the Government accordingly.

Sd/-
 (Ajit J. Agni),
 Presiding Officer,
 Industrial Tribunal

ANNEXURE "A"

Name	Joining Date	Basic	HRA	Con.	Total	Leave encash	Bonus	Ex-gratia	Notice pay	Total no. of Days	Total closer compan.	Nov.	Dec.	Jan.	Total	40% DEDUCTION	Grand Total	
												Sal Payable			Nov.	Dec.		
Nadaf Mehabo-obi	01-04-98	16.00	0.00	0.00		216.00	416.00	6500.00	448.00	42	672.00	164.00	157.00	322.60	1979.60	153.60	147.20	9196.40
Madkaikar Chaya	01-07-96	16.00	0.00	0.00	416.00	392.00	416.00	6500.00	448.00	38	608.00			379.00	1827.00			8743.00
Naik Umesh	01-04-96	25.00	0.00	200.00	850.00	350.00	650.00	6500.00	900.00	42	1050.00	384.00	340.00	740.90	3764.90	330.00	298.15	11543.05
Ghorai Tapan	01-04-96	30.00	300.00	200.00	1280.00	600.00	780.00	6500.00	1340.00	42	1260.00	621.00	609.00	1121.35	5551.35	500.00	485.15	13816.50
Pal Bijay	01-06-96	40.00	300.00	200.00	1540.00	560.00	1040.00	6500.00	1620.00	38	1520.00	689.00	1068.00	1230.95	6687.95	576.00		14803.95
Patil Sanjay	01-09-94	35.00	300.00	200.00	1410.00	420.00	910.00	10000.00	1480.00	64	2240.00	202.90	601.00	1082.50	6026.40	517.10		17453.50
Samanta Deba	01-09-94	40.00	300.00	200.00	1540.00	680.00	1040.00	10000.00	1620.00	64	2560.00	0.00	0.00	7.65	4867.65	0.00		15907.65
Ghorai Goutam	01-05-95	45.00	300.00	200.00	1670.00	720.00	1170.00	7750.00	1760.00	53	2385.00	0.00	415.00	270.36	5009.64	428.00		14357.64
Ghorai Bifal	01-05-95	35.00	300.00	200.00	1410.00	560.00	910.00	7750.00	1480.00	53	1855.00	628.00	608.00	1130.10	6261.10	528.00	513.77	15962.87
Murgaonkar Gurudas	01-12-95	25.00		200.00	850.00	400.00	650.00	7750.00	900.00	45	1125.00	197.00	191.00	453.75	3266.75	303.60	298.15	12268.50
Nawaj Bande	01-01-96	30.00		200.00	980.00	510.00	780.00	7750.00	1040.00	45	1350.00	407.00	732.00	838.35	4877.35	349.60		13756.95
Mankar Asha	01-09-94	26.00			676.00	442.00	676.00	10000.00	728.00	64	1664.00			604.35	3438.35			14114.35
Jalmi Anusuya	01-09-94	26.00			676.00	611.00	676.00	10000.00	728.00	64	1664.00			605.15	3608.15			14284.15
Kulkarni Laxmi	01-09-94	23.00			598.00	575.00	598.00	10000.00	644.00	64	1472.00	137.00	361.00	197.60	3386.60	230.00		14214.60
Kundaikar Yeshwant	01-07-96	20.00		150.00	670.00	320.00	520.00	6500.00	710.00	38	760.00	206.00	299.00	583.00	2878.00	187.20	255.56	10340.76
					7356.00	11232.00	120000.00	15846.00			22185.00	3635.90	5381.00	9026.89	63430.79	4103.10	1997.98	2007639